



PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT ON OR ABOUT APRIL 1, 2014

SUBMITTED TO CONGRESS NOVEMBER 14, 2013



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The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000 · (202) 707-8350

November 14, 2013

Dear Mr. President:

On behalf of the United States Copyright Office and in accordance with Section 708(b) of Title 17 of the United States Code, I am pleased to present a schedule and analysis of proposed fees for Copyright Office services. Fees comprise about two thirds of the Office's operational budget.

As required by the statute, the proposed schedule contemplates both the costs of the Office in administering services and the overall objectives of the copyright system. For example, it recognizes the fact that copyright registration and recordation benefit the general public and prospective users of copyrighted works, as well as copyright owners, and that neither is required as a condition of copyright protection.

In reaching its conclusions, the Office engaged in a public notice and comment process and carefully considered public feedback. By law, the Register may institute the new fees 120 days after the proposed schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. The Office seeks to implement the new fees on or about April 1, 2014.

Thank you for your consideration of this proposed fee schedule.

Respectfully,

A handwritten signature in cursive script that reads "Maria A. Pallante".

Maria A. Pallante
Register of Copyrights and Director
U.S. Copyright Office

Enclosure

The Honorable Joseph Biden
President
United States Senate
Washington, D.C. 20510



The Register of Copyrights of the United States of America
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The Honorable John Boehner
Speaker of the House
of Representatives
Washington, D.C. 20515

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Executive Summary

The U.S. Copyright Office has prepared this analysis and proposed fee schedule pursuant to Section 708 of Title 17,¹ which governs the legal authority of the Register of Copyrights to establish, adjust, and recover fees for certain services it provides to the public under the Copyright Act.² Registration and other fees must be “fair and equitable and give due consideration to the objectives of the copyright system.”³ The Office last adjusted its fees in 2009, after moving major portions of the copyright registration process online.

The study described herein was commenced in 2012. The Office conducted a preliminary assessment of its 2011 costs, followed by the publication of a series of questions in the Federal Register, including both pricing and related policy questions, and provided opportunities for public comment. From these results, the Office has developed a fee schedule that it believes achieves the goals of the statute. Significantly, authors and other copyright owners are not required to register their copyrights or record their assignments of copyright title with the Copyright Office as a condition of legal protection. Among the conclusions in this analysis is that some price differentiation between single authors and larger copyright owners is appropriate and should be adopted. This kind of differentiation and the associated policy rationales are something the Office is likely to continue to study and discuss with the copyright community.

Just as the creation and dissemination of copyrighted works are dependent upon a growing digital marketplace so, too, is technology a significant factor in the advancement of Copyright Office functions. The Register’s responsibility to administer the copyright law is dependent upon an efficient and reliable technology infrastructure. While some of the Office’s core functions, including registration, are accessible online, others, such as the Office’s recordation service, remain largely paper-driven and need to be modernized for the digital age. In recent months, the Office has been engaging with its customers – the American public – to evaluate its information technology platforms and associated processes, to understand various commercial platforms used in the marketplace, and to begin to plan for enhancements and long-range necessities. The Office will continue to invite public discussion of its services and fees as it moves forward.

Consistent with the provisions of Section 708, the fees proposed herein⁴ will take effect in April 2014 pursuant to regulations to be issued by the Register of Copyrights unless, within 120 days of the date of the submission of this proposal to Congress, Congress chooses to enact a law stating that it does not approve the new fees.⁵

¹ Section 708 is set forth in Appendix A hereto.

² *See generally* 17 U.S.C. § 708.

³ 17 U.S.C. § 708(b)(4).

⁴ Note that this report addresses only those fees that the Register is required to present to Congress in advance of implementation. *See id.* § 708(b). Other fees, such as those associated with the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, 124 Stat. 1218 (2010) (“STELA”), are adjusted separately under a different statutory provision. *See* 17 U.S.C. § 708(a).

⁵ *See* 17 U.S.C. § 708(b)(5).

I. Budgetary and Legal Framework

A. Sources of Funding

The basic budget⁶ of the Copyright Office is derived from two sources: (1) fees collected from members of the public to obtain Office services; and (2) appropriations from Congress.⁷ Historically, fees have made up the lion's share of the Office's basic budget, with a range of 59% to 67% over the past five years. Congress decides, in the course of the federal budget authorization, how much income the Office may utilize to cover its costs. Thus, the Office may spend incoming fees, but only up to the amount authorized by Congress. Appropriated dollars make up a much smaller but still critical part of the budget, and help the Office pay for essential operations. This part of the appropriations process reflects that fact that many of the services of the Copyright Office benefit not only individual copyright owners but also the general public, for example, by providing the public with a searchable database of copyright registration and ownership information.

The Copyright Act states that “fees that are collected shall remain available until expended.”⁸ Accordingly, if fees exceed the Office's annual spending limit, the surplus is maintained in a reserve account. The Office organizes its operations with the expectation that it will be able to draw upon this money in the future to cover unexpected operational costs and short-term deficits caused by fluctuations in fee receipts. The Office's reserve fund also includes deobligated prior year fees⁹ and other fees authorized for expenditure but not spent. The reserve account is vital to the Office's operations because fee receipts can and do fluctuate unpredictably and it may be difficult to change the Office's spending structure quickly in response to an unanticipated shortfall. In fiscal years 2011 and 2012, the reserve account was instrumental in preventing disruption of Office operations, including from potentially severe cost-cutting measures at the end of the fiscal year. A healthy reserve fund provides the Office with the flexibility to cover unanticipated fee receipt changes and unexpected resource demands, and may also be used to fund capital improvement projects, such as the design and development of new information technology systems to enhance the delivery of services, and to meet the expectations of businesses and other entities – large and small – that depend upon the Copyright Office for their commercial and noncommercial activities.

There is a distinct budget for activities of the Office's Licensing Division. That division is responsible for administering aspects of a number of statutory licenses, including the processing of licensee statements of account and royalty payments for the cable and satellite statutory

⁶ In addition to the Office's basic budget, the Copyright Office Salaries and Expenses Appropriation includes a budget for the Copyright Royalty Judges and for the Office's Licensing Division.

⁷ Although the Copyright Office is organizationally within the Library of Congress, it receives a separate appropriation. See H.R. REP. NO. 112-511, at 15-16 (2012); S. REP. NO. 112-197, at 33-37 (2012); U.S. Copyright Office Testimony on Administration and Budget, *available at* <http://www.copyright.gov/regstat/leadership.html>.

⁸ 17 U.S.C. § 708(d)(1).

⁹ Deobligated fees are fees that were once obligated for particular expenditures but are no longer required for the expenditures.

licenses embodied in Sections 111 and 119 of the Copyright Act. The cost of the Licensing Division's administration of royalty payments under statutory licenses is wholly offset by deductions from the royalties collected and thus is accounted for under a separate budget.

B. Budget for Fiscal 2012

For fiscal 2012, the Office had an overall annual operating basic budget of approximately \$45 million. Approximately 60% of the Office's spending was funded through fee receipts, with appropriated dollars covering 34%, and reliance on the reserve account providing the remaining 6%.¹⁰

C. Fee Types and Adjustments

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

- 1) Filing an application under Section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;
- 2) Filing an application for registration of a claim for renewal of a subsisting copyright, including the issuance of a certificate of registration if registration is made;
- 3) Issuing a receipt for a deposit under Section 407;¹¹
- 4) Recording a transfer of copyright ownership or other document;
- 5) Filing a notice of intention to obtain a compulsory license under Section 115(b) (“Notice of Intent”);¹²
- 6) Recording a statement revealing the identity of an author of an anonymous or pseudonymous work, or for recording a statement relating to the death of an author;
- 7) Issuing an additional certificate of registration;

¹⁰ In addition, the Licensing Division had a separate operating budget of \$5 million in fiscal 2012 for its role in administering royalty payments and royalty accounts under certain statutory licenses. This separate budget was funded by deductions from the royalty pools it administers.

¹¹ Section 407 requires copyright owners and publishers to deposit copies of works published in the United States in the Copyright Office within three months of publication for the use or disposition of the Library of Congress. 17 U.S.C. § 407.

¹² Section 115 permits a licensee to make and distribute phonorecords of musical works, including in digital formats, provided certain statutory requirements are met. *See id.* § 115.

- 8) Issuing any other certification;
- 9) Making and reporting of a search, and for any related services;
- 10) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to Sections 119 and 122; and
- 11) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to Section 111.¹³

In addition, Section 708(a) authorizes the Register to fix fees for other services, such as the cost of preparing copies of Office records.¹⁴

Section 708 contemplates two different fee-setting mechanisms. Fees for the services described in (1) through (9) above – which include the Office’s registration and recordation functions and thus reflect especially important public policy objectives – are to be set forth in a proposed schedule that is sent to Congress 120 days before the adjusted fees can take effect.¹⁵ Other fees, including those for the filing of cable and satellite statements of account under (10) and (11) and additional Office services, are not submitted to Congress but are instead established by the Register of Copyrights based on the Office’s costs.¹⁶

Before proposing new fees for the services enumerated in (1) through (9), the Register must conduct a study of the Office’s costs for registering claims, recording documents, and providing other services, and must consider the timing of any fee adjustments and the Office’s authority to use the fees consistent with the Office’s budget.¹⁷ Section 708(b) further provides that the Register may adjust these fees to “not more than necessary to cover the reasonable costs incurred by the Copyright Office for ... [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs.”¹⁸ Finally, Section 708(b) mandates that the “[f]ees [so]

¹³ *Id.* § 708(a).

¹⁴ *Id.*

¹⁵ *Id.* § 708(b).

¹⁶ *Id.* § 708(a). With the 2010 enactment of STELA, Congress for the first time authorized the Office to charge fees to licensees for the Office’s processing of cable and satellite statements of account under the Section 111, 119, and 122 statutory licenses. Such fees are to be “reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.” 17 U.S.C. § 708(a). To implement STELA, the Office conducted a study of its costs in relation to the filing of cable and satellite statements and solicited input from stakeholders on proposed fees through a notice and comment proceeding. *See* Notice of Proposed Rulemaking, 77 Fed. Reg. 18,742 (Mar. 28, 2012); Notice of Proposed Rulemaking, 77 Fed. Reg. 72,788 (Dec. 6, 2012), *both available at* <http://www.copyright.gov/docs/newfees/>. As noted above, the STELA fees are not required to be submitted to Congress but will be established by the Office based on the costs of processing cable and satellite filings and after consideration of public comments.

¹⁷ 17 U.S.C. § 708(b)(1).

¹⁸ *Id.* § 708(b)(2).

established ... shall be fair and equitable and give due consideration to the objectives of the copyright system.”¹⁹

Since 1997, the Office has undertaken a series of studies to determine what fees to charge for specific services.²⁰ The Office revisits its schedule of fees approximately every three years, a process during which it seeks and considers public comment before submitting the proposed fee schedule to Congress.

II. Fee-Setting Objectives

When considering adjustments to its fee structure, in addition to fiscal considerations, the Office must weigh the public importance of registration and recordation, the availability of legal protections for authors and other copyright owners, and the provision of critical materials to the Library of Congress.²¹ The adjusted fees must not diminish the vitality of the U.S. copyright system. The Office therefore attempts to set fees at a level that will allow it to recoup a large portion of its costs while maintaining a robust and accurate system of copyright records and deposit materials for the Library.

A. Value of Copyright Registration and Recordation

Many aspects of the U.S. copyright registration and recordation systems serve as models for the world. This is particularly true now, as countries around the globe consider government’s role in facilitating access to copyright information.

Participation in the voluntary copyright registration and recordation systems is an important national objective. Ultimately, the public database of copyright ownership should serve users of copyrighted materials as much as it serves copyright owners. A robust public record of copyright ownership and copyright status is essential to facilitating marketplace transactions (and the corresponding dissemination of copyrighted works) and encouraging development of innovative business models that rely on the protection (or the expiration of protection) of copyrighted works.

In addition, the copyright registration system provides immeasurable benefits to the Library of Congress, which maintains an unparalleled collection of materials for the use of Congress and patrons from across the United States and around the world. The Library receives books, motion pictures, sound recordings, and other items that it would otherwise have to purchase. The value

¹⁹ *Id.* § 708(b)(4).

²⁰ In 1997, Congress created a new fee system allowing the Office to set all of its fees by regulation rather than in the statute. An Act to make technical amendments to certain provisions of title 17, United States Code, Pub. L. No. 105-80, 111 Stat. 1529 (1997). Before then, Congress itself set the fees for certain basic copyright services, including registration and recordation (often referred to as “statutory fees”) and the Register set the fees for other special services by regulation. In enacting statutory copyright fees, Congress considered a number of criteria, including the cost of providing the service, the value of the service to the Library of Congress, and the benefit of the service to the general public.

²¹ *See* 17 U.S.C. § 708(b)(4) (fees must reflect objectives of the copyright system).

of the materials furnished by the Office to the Library was estimated at some \$30 million in fiscal 2012. The Office's registration system thus plays a pivotal role in fostering the country's cultural identity.

While registration is not a condition of copyright protection under U.S. law, a registration certificate made before or within five years of publication constitutes "prima facie evidence of the validity of the copyright and the facts stated in the certificate."²² A certificate (or at least a completed application) is required for a copyright owner to bring an infringement lawsuit in federal court.²³ Additionally, registration must be made in a timely manner if the copyright owner wants the ability to pursue statutory, rather than actual, damages and/or attorneys' fees,²⁴ important options in some cases. Thus, while registration technically is voluntary, often it is indispensable for authors who wish to protect their rights in the works they create. Enabling authors and their designees to register their works is extremely important to judicial remedies and the value of copyright in this country.

B. Cost Efficiencies and Recovery

The Office is acutely aware of its financial responsibilities as an agency of the federal government. As noted above, much of the Office's budget comes from the collection of fees for costs of services rendered. Under Section 708(b), the Register may not adjust fees to more than those necessary to cover the reasonable costs incurred by the Office for its services, plus a reasonable inflation adjustment to account for any estimated increase in costs.

At the same time, the Copyright Office cannot be viewed outside of the larger copyright system in which it operates, in which copyright transactions are a large and economically significant portion of the nation's gross domestic product.²⁵ Although the fee receipts of the Office comprise the largest share of its budget, the Office has never been funded entirely by such fees. When the Office last adjusted its fees in 2009, it was recovering approximately 61.9% of expenditures from fees for services.²⁶ In the fiscal year 2011 ("fiscal 2011"), fee receipts covered only 59.5% of the Office's expenditures. Concern about cost recovery is especially relevant when the Office, like others in the federal government, seeks to be as fiscally accountable as possible. In fiscal 2011, the Office was not able to spend up to its full 2011

²² *Id.* § 410(c).

²³ *Id.* § 411(a). This registration (or rejected application) requirement for bringing a lawsuit only applies to "United States works," as defined in Section 101 of the Act.

²⁴ *Id.* § 412.

²⁵ See STEPHEN E. SIWEK, INT'L INTELLECTUAL PROP. ALLIANCE, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2011 REPORT 4 (2011), available at <http://www.iipa.com/pdf/2011CopyrightIndustriesReport.PDF> (reporting that total copyright industries contributed \$1.627 trillion to the U.S. economy in 2010, which accounted for 11.10% of total U.S. gross domestic product).

²⁶ This number reflects information that has been updated from that included in the Office's March 28, 2012 Notice of Proposed Rulemaking.

spending authority because of a deficit in fee revenues. In 2012, the Office was able to exercise up to its full spending authority only by relying on reserve funds.²⁷

III. Procedural History

The Office initiated the cost study for its fee analysis in 2012 by compiling preliminary fee and service data from fiscal 2011. This initial research was followed by formal public outreach.

A. Initial Notice of Inquiry

On January 24, 2012, the Office published a Notice of Inquiry (“NOI”)²⁸ seeking comments on the following two questions: (1) with respect to the standard²⁹ registration application fee, whether special consideration should be provided to individual author-claimants registering a single work; and (2) whether the Office should expand, improve, or add to its offerings at this time, including, for example, additional expedited services and fee options.

The Office received ten comments in response to the initial inquiry.³⁰ A majority of the comments supported special consideration for author-claimants registering a single work. Other comments discussed potential additional services.³¹

B. Notice of Proposed Rulemaking

After reviewing the initial comments from the NOI and the data from fiscal 2011, the Office published a Notice of Proposed Rulemaking (“NPR”) on March 28, 2012.³² In the NPR, the Office set forth a proposed fee schedule along with its reasoning. The NPR reviewed potential fee changes in four categories: (1) registration, recordation, and related service fees; (2) other

²⁷ Fee income was \$27.4 million in 2011 and \$26.8 million in 2012. From 2010 to 2012, the Office experienced declining fees in part due to the large percentage of applicants who filed applications electronically at the currently discounted rate.

²⁸ Notice of Inquiry; Fees, 77 Fed. Reg. 3,506 (Jan. 24, 2012), *available at* <http://www.copyright.gov/fedreg/2012/77fr3506.pdf>.

²⁹ The Office previously referred to the most common registration filings (including for single authors claiming single works) as “basic” applications and registrations. The Office recently began using the term “standard” so it could differentiate between the newly introduced single author/single work offering – which the Office refers to as the “single application” option – and other traditional “basic” registrations, which it now refers to as “standard.”

³⁰ The comments can be viewed on the Copyright Office website at <http://www.copyright.gov/docs/newfees/>.

³¹ While the NOI requested comments on additional categories of services that might be expedited, and the Office may continue to explore these issues, it lacks sufficient information to proceed with the potential expansion of special handling services at this time. In addition, the NOI garnered a number of proposals that the Office appreciates but cannot address solely in the context of a fee study, including: whether photographers could pay a flat fee for registration of photographs in the context of a business-to-business submission model; whether copyright registration certificates and/or recorded documents could be made available online for free; and whether the Office should accept deposits of works in electronic formats that might be insufficient for the Library’s “best edition” requirement.

³² Notice of Proposed Rulemaking, 77 Fed. Reg. 18,742 (Mar. 28, 2012), *available at* <http://www.copyright.gov/fedreg/2012/77fr18742.pdf>.

service fees; (3) Licensing Division fees; and (4) Freedom of Information Act fees.³³ The Office explained that, for most of the fees, including registration, recordation, and related service fees, it calculated its costs based on traditional methodology using an activity-based costing process to determine the full costs of each Office service.³⁴ This activity-based methodology is described below.

In the NPR, the Office proposed to continue to offer both paper and electronic registration forms for standard registration claims and to continue to charge a higher fee for paper forms, which are less efficient than electronic forms for both the Office and applicants.³⁵ The Office also proposed offering a discounted registration fee for single authors who file online a claim for a single work that is not a work made for hire.³⁶ Referencing its obligation to consider the objectives of the copyright system, the Office noted the importance of individual authors' contributions to the nation's cultural identity and that many who commented on the NOI supported a lower fee in such situations.³⁷ The Office further explained that "[i]f individual authors do not register and are therefore not part of the public database, they more than any other group of copyright owners may be difficult to find."³⁸

The NPR proposed the following fees for standard registration claims: \$100 for paper applications (up from \$65); and \$65 for other electronic claims (up from \$35).³⁹ Additionally, the Office recommended a fee of \$45 for the new category of single authors filing online claims for single works not made for hire.⁴⁰ In this regard, it should be noted that the \$35 online application fee initiated in 2009 was discounted to encourage electronic registration. Prior to that, the fee for standard applications had been universally set at \$45. In the NPR, the Office also proposed raising the fees applicable to certain group registrations, including groups of published photographs, to \$100.⁴¹

The NPR also proposed new fees for renewal forms. The Office proposed reducing renewal fees from \$115 to \$100.⁴² Similarly, the Office proposed lowering the fee for filing a renewal addendum, the necessary filing for renewal when standard registration for the work was not made during the original term, from \$220 to \$100.⁴³ The Office proposed these reductions

³³ Some of the fees discussed in the NPR, including various service fees, Licensing Division fees, and Freedom of Information Act fees, are set by the Office pursuant to its authority under Section 708(a) rather than through the Section 708(b) process.

³⁴ Notice of Proposed Rulemaking, 77 Fed. Reg. at 18,743.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 18,744.

⁴⁰ *Id.*

⁴¹ *Id.* at 18,746.

⁴² *Id.* at 18,744.

⁴³ *Id.*

because renewals are no longer required to secure the full term of copyright protection and it is not feasible to attempt a full cost recovery.⁴⁴ The NPR noted that setting a fee “to recover full cost would be prohibitive and negate the goals of the Office in encouraging registration of these older claims, many of which may still be commercially viable, and incorporating these claims into the public record.”⁴⁵

Additionally, the NPR discussed raising fees for other Office services. It proposed raising the basic recordation fee from \$105 to \$120 and the fee for each additional ten titles recorded from \$30 to \$35.⁴⁶ The Office suggested these increases because, on the whole, it has not recovered the cost of processing recordations in recent years.⁴⁷ The Office further recommended increased fees for certification services and issuance of receipts for deposits under 17 U.S.C. § 407.⁴⁸ The Office also proposed raising the fee for search reports prepared from Office records to \$200 per hour with a two-hour minimum.⁴⁹

The NPR also proposed new fees for filing Notices of Intent under Section 115 of the Copyright Act. The Office accepts Notices of Intent when a user cannot serve the requisite notice of use of a musical work on the copyright owner under the Section 115 statutory license because Office records do not reflect the owner’s identity and address.⁵⁰ Recently, there has been an explosion of these notices due to the increased use of musical works by online services.⁵¹ The Office is thus developing an electronic filing system for these notices and, as part of its study, undertook to determine updated filing fees for Notices of Intent. Based on the Office’s study, it proposed a fee of \$75 for a notice with a single title, and for notices incorporating additional titles, a fee of \$20 per ten additional titles submitted on paper and \$10 per one hundred additional titles submitted electronically.⁵²

The Office received 138 comments in response to the NPR.⁵³ Some of the commenters requested that the Office expand the definition of single claimant/single author, review the renewal fees, and look to discount bulk registrations. The majority, however, expressed concerns about the proposed fee increases generally. These commenters came from a wide range of stakeholders, including photographers, visual artists, several major trade associations, and various companies, including the American Association of Independent Music (“A2IM”),

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See* 17 U.S.C. § 115(b).

⁵¹ NPR, 77 Fed. Reg. at 18,745.

⁵² *Id.* at 18,746.

⁵³ The comments can be viewed on the Copyright Office website at <http://www.copyright.gov/docs/newfees/>.

Association of American Publishers, ProQuest, EMI CMG Publishing, Graphic Artists Guild, American Photographic Artists, and the Copyright Alliance, among others.⁵⁴

A number of the comments focused on authors' financial challenges and the difficulty of shouldering higher costs. For example, the A2IM argued that "[t]he combination of dedicated anti-piracy resources and regulatory/judicial resources now required of our members to defend their businesses are resources that our [small and medium sized enterprises] simply do not have the financial means or administrative means to meet."⁵⁵ Similarly, the American Society of Media Photographers and Professional Photographers of America claimed that "proposed fee increases would be catastrophic for working photographers and would drastically reduce the frequency of their copyright registrations," which would be "devastating to photographers and detrimental to the public record, users of photographs, and the Copyright Office."⁵⁶ Some of these comments specified the potential harm in raising group registration rates for published photographs, noting that "a price increase that nearly doubles the cost of group registration for photographers appears to fly in the face of the Copyright Office's mission to increase participation in the registration process."⁵⁷

IV. Fee Setting Methodology

In conducting its cost study analysis, the Office reviewed established accounting procedures used by other governmental entities, including the Federal Accounting Standards Advisory Board's ("FASAB's") guidelines for determining the full cost of federal agency program activities⁵⁸ and the Office of Management and Budget's *Circular A-25 Revised: User Charge*⁵⁹ document regarding costing guidelines and establishing user fees.⁶⁰ Registration, recordation, and most

⁵⁴ The Office also received comments addressed to the proposed new fees for the filing of cable and satellite statements of account, which were reviewed in the NPR but are not among the fees submitted to Congress pursuant to Section 708(b). In response to these comments, the Office issued an additional Notice of Proposed Rulemaking on December 6, 2012 addressed specifically to cable and satellite filings. See Notice of Proposed Rulemaking, 77 Fed. Reg. 72,788 (Dec. 6, 2012). Stakeholder input on the cable and satellite fees authorized by STELA will be separately addressed by the Office in finalizing those fees.

⁵⁵ American Association of Independent Music ("A2IM"), Comments Submitted in Response to U.S. Copyright Office's Mar. 28, 2012 Notice of Proposed Rulemaking at 1 (May 3, 2012).

⁵⁶ Am. Soc. of Media Photographers ("ASMP") & Professional Photographers of Am. ("PPA"), Comments Submitted in Response to U.S. Copyright Office's Mar. 28, 2012 Notice of Proposed Rulemaking at 1 (May 14, 2012) ("ASMP & PPA Comments").

⁵⁷ *Id.* at 2.

⁵⁸ This includes FASAB's *Managerial Cost Accounting Concepts and Standards for the Federal Government*, which promotes activity-based costing for calculating the cost of providing services. See FASAB, MANAGERIAL COST ACCOUNTING CONCEPTS AND STANDARDS FOR THE FEDERAL GOVERNMENT (July 31, 1995), <http://www.fasab.gov/pdffiles/>.

⁵⁹ See http://www.whitehouse.gov/omb/circulars_a025.

⁶⁰ Among other things, *Circular A-25* provides that services with a broad-reaching benefit generally need not recover their full costs, whereas special services, *i.e.*, those that provide a particular benefit to a particular customer, may recover more than their full cost. The excess revenue collected from special services fees can offset losses accruing from other fees that may not recover their full cost. Additionally, *Circular A-25* directs that, if a service or

other fee services evaluated in this proposal were assessed using an activity-based costing methodology. Under this approach, the Office calculated how much each service cost the Office to provide after reviewing both the direct and indirect costs in fiscal 2011.⁶¹ Section 115 filings, which are separately administered by the Licensing Division, and Section 407 receipts, a low-volume service that could not be properly considered through the activity-based model, were evaluated using an additive methodology, which assessed staff time devoted to particular tasks.

Unlike earlier cost studies, to better gauge the costs of its services, the Office included some costs that were not previously captured, including the Office of the General Counsel's regulatory activities, which support fee services, and Public Information Office time spent answering registration-related questions. But as in earlier studies, this most recent study continued to exclude costs associated with the policy and international programs, the mandatory deposit program, and programs dedicated to providing general education and information to the public. These exclusions generally relate to work performed by staff within the Office of the General Counsel, the Office of Policy and International Affairs, the Publications Section, the Public Information Office, and the Copyright Acquisitions Division.

Against this backdrop, the Office undertook a comprehensive review of the fees associated with its various activities. Most copyright processes are labor intensive and staff activity costs can be linked directly to the various fee services. Under an activity-based approach, personnel resource costs are assigned to specific activities. For example, mailroom personnel in the Receipt Analysis and Control Division are assigned to the activity called "sort mail" (among others), and a determination is made as to the proportion of their time spent on that activity. In the case of personnel costs associated with administration at the division level, costs are apportioned among the activities within the division. Office-wide administrative costs, such as the Register's time and that of her administrative staff, are similarly apportioned. In this way, the Office can capture direct and indirect personnel costs associated with particular activities.

The next step in the process is the assignment of non-personnel costs. If non-personnel costs are associated with just one fee service, they were directly assigned to that activity. For example, the maintenance costs for the eCO system, the online copyright registration system, are assigned directly to the Copyright Technology Office activity "eCO." Other non-personnel costs associated with multiple services were allocated proportionately among all relevant activities. Once all non-personnel costs are assigned to an activity, those costs are incorporated into the overall costs for the various fee services. Using an earlier example, the sort mail activity was considered a cost for each fee service that is dependent upon incoming mail including, for example, paper registrations, renewals, and document recordations.

Using these cost determinations as a starting point, the Office next considered the other statutory fee-setting factors, including changes in costs due to inflation. Economic considerations,

product may be available from competing non-governmental sources, the fee should neither greatly exceed nor greatly undercut those offered in the open market.

⁶¹ The Office's cost calculations concerning the services and fees reviewed in this proposal are set forth in Appendix B.

including price elasticity,⁶² played a critical role in evaluating the Office's fees. The Office considers elasticity when assessing whether fee receipts will recover the appropriate percentage of costs, both individually and collectively. The Office has determined that demand for a majority of its services is price elastic and that it experiences a reduction in demand whenever fees are increased. While external factors such as the economy also influence filing volume, there is a demonstrated inverse relationship between an increase in fees and the number of claims filed.

Registration filing and document recordation are two heavily used services, together generating well over 90% percent of the Office's fee receipts. These two categories of fees are quite vulnerable to a decline in demand as fees increase. For example, in the months following a fee increase more modest than the one proposed here, registration filings have dropped as much as 17%.⁶³ Therefore, the Office expects a rather significant short-term decrease in filings with the introduction of the fees proposed herein, which should lessen as filers adjust to the new fees. Recognizing this fact, the Office must set fees such that each new fee recovers a reasonable percentage of the cost of processing the claim, but does not result in a more permanent disincentive to register works and a long-term decrease in fee receipts.

Additionally, the Office must ensure that fee receipts are sufficient to offset the requisite level of Office operations, taking into account fluctuations in filing volumes, whether brought on by increased fees and/or other economic factors in the marketplace. It is important that fee receipts bring in sufficient revenue to cover the greater part of the Office's operations annually and sustain a reserve fund for use in the event of a short-term budgetary shortfall.

In addition to overall budgetary considerations, the determination to recover full or partial costs for a particular service must also take into account the statutory requirement that fees be fair, equitable, and give due consideration to the objectives of the copyright system. The Office has taken care to consider these factors in developing its proposed fee schedule.

⁶² Elasticity is the term used to "measure[] how much the quantity demanded responds to changes in the price." JOSHUA GANS, STEPHEN KING, ROBIN STONECASH, & N. GREGORY MANKIW, *PRINCIPLES OF ECONOMICS* 115 (5th ed. 2012).

⁶³ Number based on the decline of registrations after the introduction of new fees in fiscal year 2007.

V. Proposed Fees

A. Schedule of Proposed Adjustments

Below is a chart of the proposed adjusted fees that shows the percentage change from existing fees:

	Registration, Recordation and Related Services Referenced in 708(a)(1)-(9)	Current Fee	Proposed New Fee	Percent Change
(1)	Registration of a standard or single author/single work claim in an original work of authorship:			
	Electronic filing:			
	(i) Single author, same claimant, one work, not for hire	\$35	\$35	0%
	(ii) All other filings	\$35	\$55	+ 57%
	Paper Filing (Forms PA, SR, TX, VA, SE)	\$65	\$85	+ 31%
	Registration of a claim in a group of contributions to periodicals (Form GR/CP) or database updates	\$65	\$85	+ 31%
	Registration of a group of published photographs (Form GR/PPh/CON)	\$65	\$65	0%
	Registration of a claim in a group of serials (Form SE/Group) (per issue, minimum 2 issues)	\$25	\$25	0%
	Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN)	\$80	\$80	0%
	Registration of a claim in a restored copyright (Form GATT)	\$65	\$85	+ 31%
	Registration of a correction or amplification to a claim (Form CA)	\$100	\$130	+ 30%
(2)	Registration of a renewal claim (Form RE):			
	(i) Claim without addendum	\$115	\$100	- 13%
	(ii) Addendum (in addition to the fee for the claim)	\$220	\$100	- 55%
(3)	Issuance of receipt for § 407 deposit	\$30	\$30	0%
(4), (6)	Recordation of document, including a Notice of Intention to Enforce (single title)	\$105	\$105	0%
	Additional titles (per group of 1 to 10 titles)	\$30	\$35	+ 17%
(5)	Filing of Notice of Intent to Make and Distribute Phonorecords Under § 115	\$60	\$75	+ 25%

	Registration, Recordation and Related Services Referenced in 708(a)(1)-(9)	Current Fee	Proposed New Fee	Percent Change
	(i) Additional titles (per group of 1 to 10 titles) (paper filing)	\$20	\$20	0%
	(ii) Additional titles (per group of 1 to 100 titles) (electronic filing)	N/A	\$10	N/A
(7)	Issuance of additional certificate of registration	\$35	\$40	+ 14%
(8)	Certification of other Copyright Office records, including search reports (per hour)	\$165	\$200	+ 21%
(9)	Search report prepared from official records other than Licensing Records (per hour, two-hour minimum)	\$165	\$200	+ 21%
	Estimate of search fee (credited to search fee)	\$115	\$200	+ 74%
	Search report prepared from Licensing Records (per hour, one hour minimum)	\$165	\$200	+ 21%

The above fee schedule reflects the Office's careful deliberation concerning the costs of providing its services and the important public interests it serves under Title 17.⁶⁴ Because many of the above services benefit the public as well as individual users, full cost recovery is not always appropriate. Considerations of fairness and reasonableness thus played an important role in the proposed adjustments.

B. Analysis

Based on its study, the Office has determined that some fees should increase, some should decrease, and a few should remain the same. From past experience, it is certain that any increase in fees will result in fewer claims, at least temporarily in the months immediately following implementation. It is anticipated, however, that, at the fee levels proposed, revenues lost due to a decrease in the number of claims will be offset by revenues generated from the higher fees and ultimately yield an increase in overall fee receipts. The Office estimates that revenues generated by these proposed fees and the other fees under its basic budget will be roughly \$28 million, in line with the Office's projected 2014 fee spending authority for the basic budget.⁶⁵

Below is additional explanation of the Office's proposals with respect to the various fee categories.

⁶⁴ See Appendix B for additional data concerning the Office's costs in connection with these services.

⁶⁵ The \$28 million estimate includes fees in addition to those required to be submitted to Congress.

1. *Registration Fees*

Although registration offers substantial benefits to the registrant and to the public, it is a voluntary act. For this reason, fees have to be affordable so that individual creators are not discouraged from registering their works.

Two issues in particular stood out during the Office's review of its registration fees. First, while recommending a general increase in registration fees, the Office believes it is appropriate to maintain a lower fee for individuals filing online for single works that are not works made for hire. Single author, single work applications, when filed electronically, are less complicated than others to process, provide important protections for the author, and benefit the public by adding to the public record.

Second, the Office is concerned about the challenges faced by photographers, who expressed significant concern about the impact of fees on their ability to protect their works. Photographers have an additional burden in registration due to the number of works they produce and must register in order to receive the full range of judicial remedies for infringement. Accordingly, the Office proposes that the fee for group registrations of photographs remain at its current level.

a. *Standard Registrations*

The Office has arrived at the following adjustments to its standard registration fees:

- Fee for applications filed electronically to increase from \$35 to \$55
- Fee for applications filed on paper to increase from \$65 to \$85

The Office offers applicants two options for filing standard applications: (1) electronic filing through the Office's eCO system; and (2) paper filing using a traditional hard copy application.⁶⁶ Currently, the vast majority of applicants use the online filing option; the Office receives approximately 91% of new copyright claims through eCO. Electronic filings cost the Office less to process than paper applications. Additionally, online applications are attractive because, on average, the Office requires approximately two to five months to complete most claims that are filed electronically versus five to eleven months to complete most claims filed on paper applications.

In reviewing its registration fees, the Office closely examined its costs and the degree to which they are recovered under the existing fee structure. Using an average weighted by claim volume, the Office recovered only 65% of its costs in processing online claims and 63% of its costs in processing paper applications during fiscal 2011. These figures support the Office's proposal to

⁶⁶ The Office eliminated Form CO (an alternative paper form incorporating scannable bar codes) in the summer of 2012, thus leaving only two methods for filing a standard registration claim. *See* Discontinuance of Form CO in Registration Practices, 77 Fed. Reg. 18,705 (Mar. 28, 2012); Discontinuance of Form CO in Registration Practices Correction, 77 Fed. Reg. 20,988 (Apr. 9, 2012).

increase fees for both options to recover a larger percentage of the Office's costs. It is estimated that by implementing the proposed fees (including the single author/single work fee discussed below) the Office would recover 71% of the costs of processing electronic claims and 66% of the costs of processing paper applications.

The Office recognizes the value of paper applications for those applicants who do not have adequate access to the Office's online system or who have other reasons to prefer paper filings. At the same time, the substantially higher costs of processing paper applications as compared to the more efficient electronic process continue to justify a higher fee for paper applications. Accordingly, the Office continues to propose different filing fees for these applications. For electronic applications for standard registration claims, the Office proposes to raise the current fee from \$35 to \$55. Though this is a \$20 increase over the current fee, the Office notes that after the launch of the eCO system, the current fee of \$35 was lowered from the then-existing fee of \$45 to incentivize electronic filings. The proposed \$55 fee is thus only \$10, or 22%, more than the Office's prior non-discounted filing fee. Moreover, the proposed \$55 fee is less than the \$65 fee that was proposed in the NPR, thus responding to public comments concerned with the amount of the increase for electronic filing.⁶⁷

The Office is increasing the existing \$65 fee for paper applications to \$85. This proposal will provide the Office more cost recovery for the inefficiencies of paper filings. The Office notes that the proposed fee of \$85 is significantly lower than the \$100 fee proposed in the NPR. The revised fee accounts for the Office's consideration of public comments arguing that a \$100 fee was unduly harsh.⁶⁸ After reviewing the comments, the Office concluded that, while budget and cost considerations mandate an increase, the increase should be more modest in light of the significant public interest in registration, including through a paper-based process.

b. *Single Author, Single Work Registrations Filed Online*

The Office has arrived at the following fee for single author, single work registrations:

- Fee for registration applications filed online for a single work by a single author not made for hire to remain at \$35

⁶⁷ See, e.g., Ass'n of Am. Pubs., Comments Submitted in Response to U.S. Copyright Office's Mar. 28, 2012 Notice of Proposed Rulemaking at 2 (May 14, 2012) ("[T]he pending proposal to nearly *double* current online registration fees would, if adopted, lead many [publishers], especially but not exclusively the small or non-profit publishers, to reevaluate the categories of works currently being registered with the objective of reducing their registration costs.") (emphasis in original).

⁶⁸ See, e.g., ASMP & PPA at 3 ("Although we recognize the Copyright Office's desire to encourage registrants to use the eCO registration platform over Form VA, we believe that nearly doubling the cost for those adept at using Form VA would create a significant deterrent to registration in its entirety."); ArtistsUndertheDome.org, Comments Submitted in Response to U.S. Copyright Office's Mar. 28, 2012 Notice of Proposed Rulemaking at 2 (May 14, 2012) ("The ... \$100 [fee] is unacceptable ... those who use paper filing systems tend to be older, do not have access to the internet or fast internet services such as broadband, and/or they tend to be lower income. ... These proposed increased fees will mean less artists will be able to afford to register their copyright(s).").

The Office is committed to maintaining an affordable copyright registration system and understands that works of independent creators fuel the nation's economy and are critical to the Library of Congress' collections. Moreover, if individual authors do not register and are not part of the public database, they – more than any other group of copyright owners – may be difficult to find. The Office therefore believes that the fee for individual authors filing applications for single works through the online system should remain at \$35.

In making the decision to create a new registration category for individual authors, the Office took into account a large number of public comments advocating for a lesser fee. Commenters noted, as did the Office, that such applications are easier to process, that registration provides important remedies for the author, and that registration benefits the public by creating a more complete public record. As one commenter noted, “[Office] [s]ervices which facilitate individual author-claimants registering a single work that is not a work made for hire ... promote and protect authorship and potentially sharpen the chain of title documentation”⁶⁹ Those supporting a reduced fee for single author/single work claims come from a variety of backgrounds, including the performing and visual arts. The Office believes this option will serve a wide range of authors.⁷⁰

c. Group Registration Fees

The Office has arrived at the following with respect to group registration fees:

- Fees for registration of a claim in a group of contributions to a periodical (Form GR/CP) or database updates to increase from \$65 to \$85
- Fees for registration of a group of published photographs (Form GR/PPh/CON) to remain at \$65
- Fees for registration of a claim in a group of serials (Form SE/Group) (per issue, minimum of two issues) to remain at \$25
- Fees for registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN) to remain at \$80

The Office has determined that the fees for registration of one type of group claims should be adjusted. The fee to register a claim in a group of contributions to a periodical – a paper-based process that is labor-intensive – is proposed to increase from \$65 to \$85.

⁶⁹ Independent Film and Television Alliance, Submitted in Response to U.S. Copyright Office's Jan. 24, 2012 Notice of Inquiry at 1 (Feb. 23, 2012).

⁷⁰ Since proposing this option, the Office has published an additional Federal Register notice explaining that the single author/single claim application is now available for use on the Office's eCO system. *See* Single Application Option, 78 Fed. Reg. 38,843 (June 28, 2013). In the past several months, applicants have begun to use the new procedure, allowing the Office to assess how best to implement the process and assist individual authors.

In the case of both serials and newspapers, where the Office's cost recovery currently appears adequate, the Office is not recommending an adjustment. Although the NPR had indicated that these two latter categories of fees would also be subject to an increase, upon further analysis, the Office believes that the current fees remain appropriate.

Similarly, for groups of published photographs, the Office recommends no increase. Despite its initial proposal to increase this fee, the Office now recommends it remain at \$65. Comments received in response to the Office's initial fee proposal demonstrate that photographers face particular challenges with the registration process due to the large quantities of works they often create in brief periods of time.⁷¹ In light of these conditions, the Office is continuing to study how best to facilitate photographers' registration of their works. Thus, while the Office may adjust the fee structure for registration of groups of published photographs in the future, the fee should not change now.

d. *Other Registration Fees*

The Office has arrived at the following adjustments to certain other registration fees:

- Fee for registration of a claim in a restored copyright (Form GATT) to increase from \$65 to \$85
- Fee for registration of a correction or amplification to a claim (Form CA) to increase from \$100 to \$130

After reviewing its costs, the Office determined that current fees do not offset a sufficient percentage of the Office's costs in accepting registrations for paper-based claims, which include claims in restored copyrights (Form GATT). In addition, it concluded that the current fee for filing a registration of a correction or amplification to a claim (Form CA), another paper-based process, was insufficient. Paper-based processes are considerably less efficient than electronic registration. Accordingly, the Office is proposing increases to both of these fees.

2. *Renewal Claims*

The Office has arrived at downward adjustments of the following renewal fees, as follows:

- Fee for renewal application to decrease from \$115 to \$100
- Fee for renewal addendum to decrease from \$220 to \$100

The Office is suggesting these reductions due to the unique nature of renewals in the history of copyright law and recent experiences in reviewing renewal documents. Under prior law, certain copyright claims had to be renewed with the Office in their twenty-eighth year of protection to remain valid for the remainder of their terms. The current Act changed the renewal

⁷¹ See, e.g., ASMP & PPA Comments; Nat'l Press Photographers Ass'n, Comments Submitted in Response to U.S. Copyright Office's Mar. 28, 2012 Notice of Proposed Rulemaking (May 14, 2012).

requirement; since January 1978, a renewal is no longer necessary to secure the full term of protection. Nonetheless, for pre-1978 works, renewal registration still offers certain benefits for the owner and the public.

There has been a dramatic decrease in renewal registrations over the past seven years, likely due to the change in law and increased fees associated with renewal. In this same time frame, some of those who perhaps may have benefited from filing renewal registrations instead mistakenly attempted to file initial claims of registration. Dwindling and incorrect renewal registrations diminish the public record, thus harming the Office's overall mission to serve as a robust repository of copyright information.

The Office's proposal to lower the renewal fee to \$100 should encourage the filing of more renewal claims. Similarly, the proposed fee for a renewal addendum, an additional requirement when standard registration for the work was not made during the original term, would also be lower. A renewal addendum documents the copyright status of a work, thus allowing users to know whether the work is under copyright protection. The Office believes that the suggested lower fees for renewals and renewal addendums will strike the appropriate balance between cost recovery and the public record.

3. *Section 407 Receipts*

The Office concludes there should be no change to the following fee:

- Fee for issuance of a receipt for a § 407 deposit to remain at \$30

Under Section 407(b), a depositor who has furnished copies or phonorecords for the use or disposition of the Library of Congress as required under that section may obtain a receipt for the deposit upon payment of the applicable fee. The cost study showed that this is a rarely used service. After evaluating the cost of issuing such receipts, the Office concluded that the existing fee did not need to be changed.

4. *Recordation of Documents*

The Office has arrived at the following fees for recordation services:

- Fee for recordation of a document to remain at \$105
- Fee for recording groups of up to ten additional titles associated with that document to increase from \$30 to \$35

In the NPR, the Office proposed increases to its recordation fees to help the Office better recover costs in this area. The Office's eCO system permits electronic registration of copyright claims. By contrast, the Office's recordation system – which is not part of eCO – remains a largely paper-driven process. Although the Office recovers the cost of recording simple documents, it has been unable to recover the full cost associated with processing more substantial documents

that include multiple titles of copyrighted works. The titles, which can number in the thousands, must each be individually indexed.

Recordation of copyright transfers and other copyright-related documents is a voluntary process but critical to maintaining a public record of copyright ownership. The proposed increase to \$35 for each ten additional titles associated with a recorded document will allow for greater cost recovery in the case of more complicated filings but should not be overly burdensome for filers. At the same time, upon further analysis of its costs, the Office has determined that it is not necessary to change the existing fee of \$105 for its basic recordation service, where it is already achieving full recovery. The Office is currently considering how to migrate its recordation function to an electronic system, a process which may require both statutory changes and technological upgrades, and will continue to evaluate its recordation fees as that process moves forward.⁷²

5. *Section 115 Notices of Intent*

The Office has arrived at the following fees for the filing of Notices of Intent pursuant to Section 115(b):

- Fee for filing a basic notice with a single title to increase from \$60 to \$75
- Fee for paper filing of additional titles to remain at \$20 per group of ten
- Fee for electronic filing of additional titles to be established at \$10 per group of 100

With the rise of digital services offering expansive catalogs of music, many more users seek to file Notices of Intent to avail themselves of the Section 115 statutory license when they cannot identify or locate the owners of particular musical works in Office records. In 2009, the Office responded by adjusting its Section 115 filing fees to accommodate the submission of multiple titles at the same time. More recently, the Office has initiated a test of an electronic filing option to allow for more cost-effective processing of digitally submitted notices with multiple titles. While the currently proposed fees reflect the higher costs of handling single-title notices, they also take into consideration the cost savings associated with online submission of multiple titles by adopting a substantially lower per-title fee for such submissions.⁷³

⁷² The Office is looking at this issue in several ways, including through stakeholder meetings, technology assessments, and scholarly analysis as to the recordation requirements of Title 17.

⁷³ In this regard, the Office notes that while it considered the comment in response to the NOI that it cap its fee for such filings, at this time the Office believes such a cap would fail to allow adequate cost recovery for accepting and maintaining these records.

6. *Certification Fees*

The Office has arrived at the following adjustments to its fees for the issuance of certifications:

- Fee for issuance of additional certificate of registration to increase from \$35 to \$40
- Fee for certification of other Office records, including search reports, to increase from \$165 to \$200 per hour

Based on the cost study, the Office is recommending a modest increase to the fee for issuance of additional certificates of registration. Even though this could yield fee receipts slightly above the Office's costs in providing additional certificates, the limited increase is appropriate under the fee-setting principles articulated in OMB's Circular A-25 because the service in question benefits only the individual requestor and any excess fee receipts can be used to subsidize other services with less cost recovery. Moreover, at \$40, the new fee remains very reasonable.

With respect to other types of Office records and search reports, as in past cost studies, the Office has determined that fee receipts cover less than the actual costs of providing certification services. The Office recognizes, however, that users need to be able to obtain certified copies of Office records in a reasonably affordable manner for legal and other purposes. Although the Office is proposing an increase in its fee for these additional certification services, it has been mindful of its duty to balance the goal of cost recovery against the need for access to reliable public records. It is therefore recommending that this fee be set below full cost recovery.

7. *Search Reports*

The Office has arrived at the following adjustments to search report fees:

- Fee for reference search reports other than Licensing reports to increase from \$165 to \$200 per hour, with a two-hour minimum
- Fee for estimate of search fee to increase from \$115 to \$200 (applied against the search charges)
- Fee for search report prepared from Licensing records to increase from \$165 to \$200 per hour, with a one-hour minimum

The Office's imposition of a two-hour minimum charge in 2009 for search reports prepared from Office records (other than those prepared from Licensing Division records) resulted in a substantial increase in cost recovery. Nevertheless, as in past cost studies, the Office has found that the fee covers only a portion of the actual cost of providing the reference search service. To achieve full cost recovery would render the cost too high for the average user as a practical matter. A very high fee also prejudices users who, for legal reasons, are required to have the Office conduct a search.

Accordingly, the Office recommends a fee increase from \$165 to \$200 per hour for search reports, again with a two-hour minimum (other than for reports prepared from Licensing Division records). To permit additional cost recovery, the Office also proposes to increase the estimate of search fee – which covers the cost of estimating the total fees for a search and is credited against the hourly search fee – from \$115 to \$200.

With respect to Licensing Division search reports, while the proposed hourly fee adjustment is the same, the Office believes a one-hour minimum is sufficient. A number of Licensing Division searches are purely factual, for example, due diligence searches to verify that mandatory filings were made. Such searches often can be conducted fairly quickly and thus the Office recommends that the fee continue to be charged in hourly increments with only a one-hour minimum fee.

VI. Budgetary Impact of Proposed Fee Changes

The Office understands that even in providing critical public services it is important to further cost recovery, especially in the current budgetary climate. In fiscal 2011, the Office experienced a deficit in fee revenues. In 2012, the Office needed to rely on reserve funds to meet its operating expenses. Fee income for these years was low, \$27.4 million in 2011 and \$26.8 million in 2012. From 2010 to 2012, the Office experienced declining fees, in part due to the large number of individuals filing registration claims electronically at the more modest fee.

The Office's proposed fee schedule represents meaningful increases in fees for many of its services due to rising costs, but also balances cost recovery against the important national objectives of the Office's registration and recordation systems and related services. From past experience, it can be predicted that any increase in registration fees will result in fewer claims, at least temporarily. The Office anticipates, however, that revenues lost due to a decrease in the number of claims will be offset by the revenues generated from the higher fees, and ultimately yield an increase in overall fee receipts. The Office projects that revenues generated by the fees proposed herein and additional fee services under its basic budget will be roughly \$28 million, in line with the Office's requested 2014 fee spending authority of \$28 million.

Conclusion

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

APPENDIX A **17 U.S.C. § 708**

§708 · Copyright Office fees

(a) FEES. — Fees shall be paid to the Register of Copyrights—

(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;

(2) on filing each application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made;

(3) for the issuance of a receipt for a deposit under section 407;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document;

(5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author;

(7) for the issuance, under section 706, of an additional certificate of registration;

(8) for the issuance of any other certification;

(9) for the making and reporting of a search as provided by section 705, and for any related services;

(10) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 119 or 122; and

(11) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.

The Register is authorized to fix fees for other services, including the cost of preparing copies of Copyright Office records, whether or not such copies are certified, based on the cost of providing the service. Fees established under paragraphs (10) and (11) shall be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.

(b) ADJUSTMENT OF FEES. — The Register of Copyrights may, by regulation, adjust the fees for the services specified in paragraphs (1) through (9) of subsection (a) in the following manner:

(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. The study shall also consider the timing of any adjustment in fees and the authority to use such fees consistent with the budget.

(2) The Register may, on the basis of the study under paragraph (1), and subject to paragraph (5), adjust fees to not more than that necessary to cover the reasonable costs incurred by the Copyright Office for the services described in paragraph (1), plus a reasonable inflation adjustment to account for any estimated increase in costs.

(3) Any fee established under paragraph (2) shall be rounded off to the nearest dollar, or for a fee less than \$12, rounded off to the nearest 50 cents.

(4) Fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system.

(5) If the Register determines under paragraph (2) that fees should be adjusted, the Register shall prepare a proposed fee schedule and submit the schedule with the accompanying economic analysis to the Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.

(c) The fees prescribed by or under this section are applicable to the United States Government and any of its agencies, employees, or officers, but the Register of Copyrights has discretion to waive the requirement of this subsection in occasional or isolated cases involving relatively small amounts.

(d) (1) Except as provided in paragraph (2), all fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

(2) In the case of fees deposited against future services, the Register of Copyrights shall request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the

fees that, as determined by the Register, is not required to meet current deposit account demands. Funds from such portion of fees shall be invested in securities that permit funds to be available to the Copyright Office at all times if they are determined to be necessary to meet current deposit account demands. Such investments shall be in public debt securities with maturities suitable to the needs of the Copyright Office, as determined by the Register of Copyrights, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(3) The income on such investments shall be deposited in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office.

APPENDIX B **SUMMARY OF COSTS AND FEES**

Summary of Costs and Fees Under 17 U.S.C. § 708(b)

	Volume in FY11	Total Cost (\$)	Cost per Unit (\$)	Current Fee (\$)	Estimate Based on FY11 Volume (\$)	Proposed New Fee (\$)	Elasticity and FY12 Volume Adjustment (%)	Projected Volume FY14	Projected Fee Receipts FY14 (\$)
Literary (eService)	178,179	8,483,013	48	35	6,236,265	35/55	17	147,889	6,950,783
Literary (paper)	38,751	3,199,674	83	65	2,518,815	85	17	32,163	2,733,855
Serials (eService)	32,814	1,424,127	43	35	1,148,490	55	17	27,236	1,497,980
Serials (paper)	8,578	763,501	89	65	557,570	85	17	7,120	605,200
Visual Arts (eService)	81,526	4,982,937	61	35	2,853,410	35/55	17	67,667	3,180,349
Visual Arts (paper)	8,674	1,044,698	120	65	563,810	65/85	17	7,199	539,925
Performing Arts (eService)	61,675	3,619,477	59	35	2,158,625	35/55	17	51,190	2,405,930
Performing Arts (paper)	11,238	1,470,237	131	65	730,470	85	17	9,328	792,880
Motion Pictures (eService)	36,736	2,366,989	64	35	1,285,760	35/55	17	30,491	1,433,077
Motion Pictures (paper)	2,940	385,103	131	65	191,100	85	17	2,440	207,400
Sound Recordings (eService)	73,221	4,271,929	58	35	2,562,735	35/55	17	60,773	2,856,331
Sound Recordings (paper)	7,910	1,167,393	148	65	514,150	85	17	6,565	558,025
Group Serials (\$/issue, 2 issue minimum)	24,431	541,619	22	25	610,775	25	75	6,108	152,700
Group Daily Newspapers (\$/month)	2,646	208,746	79	80	211,680	80	15	2,249	179,920
Renewals	320	126,411	395	115	36,800	100	65	112	11,200
Renewal Addenda	180	88,636	492	220	39,600	100	75	45	4,500
Supplementary Registration	1,389	255,434	184	100	138,900	130	15	1,181	153,530
Document Recordation	10,146	942,292	93	105	1,065,380	105	15	8,625	905,625

Summary of Costs and Fees Under 17 U.S.C. § 708(b)

	Volume in FY11	Total Cost (\$)	Cost per Unit (\$)	Current Fee (\$)	Estimate Based on FY11 Volume (\$)	Proposed New Fee (\$)	Elasticity and FY12 Volume Adjustment (%)	Projected Volume FY14	Projected Fee Receipts FY14 (\$)
Additional Titles (group of 1-10)	11,751	587,885	50	30	352,522	35	10	10,576	370,160
Reference Search (\$/hr, 2 hr min.)	567	482,932	852	165	93,555	200	15	482	96,400
Search Estimate	14	8,547	611	115	1,610	200	15	12	2,400
Additional Certificate of Registration	2,687	82,641	31	35	94,045	40	5	2,553	102,120
Certification of USCO Records (\$/hr)	769	335,509	436	165	126,885	200	10	692	138,400
Receipt for 407 Deposit	1	26	26	30	30	30	0	1	30
115 Notice of Intention	70	6,945	99	60	4,200	75	0	70	5,250
115 Electronic Titles	N/A		10	N/A		10			
115 Paper Titles			14	20		20			

