

U.S. Copyright Office

Notice of Inquiry: Fees

Docket No. 2012-1

Joint Comments of

**American Society of Media Photographers
and
Professional Photographers of America**

Respectfully Submitted by:

**Victor S. Perlman
General Counsel & Managing Director
American Society of Media Photographers
150 N. 2nd St.
Philadelphia, PA 19106
215-451-2767 extension 207
perlman@asmp.org**

**David Trust
Executive Director
Professional Photographers of America
229 Peachtree St. NE
Suite 2200
Atlanta, GA 30303
404-522-8600 extension 264
trustd@ppa.com**

BACKGROUND

The American Society of Media Photographers (ASMP) and Professional Photographers of America (PPA) hereby jointly submit the following comments in response to the Register's Notice of Inquiry regarding fees for copyright registration filed January 23, 2012 (FR Doc 2012–1340).

ASMP is a nonprofit trade association that was founded in 1944 to protect and promote the interests of professional photographers who earn their living by making photographs intended primarily for publication. It is the oldest and largest organization of its kind in the world, and its members have created some of the world's greatest and most iconic photographic images.

PPA is the world's oldest and largest nonprofit trade association for professional photographers and photographic artists from dozens of specialty areas including portrait, wedding, commercial, advertising, and art. PPA consists of some 22,000 individual members and includes nearly 160 independent photography organizations that have elected to affiliate themselves with the association. For more than 140 years, PPA has dedicated its efforts to protecting the rights of photographers and to creating an environment in which these members can reach their full business and creative potential.

Both organizations carry out their missions through education, information and advocacy. Both organizations frequently provide input to the U.S. Copyright Office and are often invited to testify before Congressional committees and subcommittees on issues affecting professional photographers.

On January 23, 2012, the Register of Copyrights filed a Notice of Inquiry regarding registration fees and requested comments on two specific issues: 1) whether, with respect to the basic copyright registration fee, special consideration should be provided to individual author-claimants registering single works and 2) whether there are any special services and corresponding fees that the Copyright Office should expand, improve, or add to its offerings, including, for example, additional expedited services and fee options. We thank the Copyright Office for this opportunity to comment on these proposed revisions to the Copyright Office's fee schedule.

DISCUSSION

I. Applications by Individual Author-claimants

Copyright registrations by professional photographers present unique challenges to all parties involved. Photographers create far more copyrightable works in a far

shorter period of time than creators working in any other medium. This fact, by itself, reveals the significant burden faced by professional photographers who wish to protect themselves by registering their copyrights. The amount of effort required to register a single day's photographic output by a working photographer can be daunting. When one adds the costs of individual registrations for each image, the impediments become prohibitive, and most images simply do not get registered. This fact hurts the photographers, the Copyright Office, the Library of Congress, and the public. The Copyright Office has recognized these difficulties in the past and has created certain systems to try to alleviate the situation, such as regulations for the group registrations of published and unpublished images.

In many cases, however, the best way to protect a photographer's rights is through the registration of single works. As mentioned, costs become prohibitive when multiplied by the numbers of images produced by professional photographers. Exacerbating this situation is the fact that most photographers earn fairly modest incomes (according to a May, 2010 survey of the Bureau of Labor Statistics, photographers earned a median income of \$35,980.) and are unable to bear significant costs of copyright registration.

Naturally, professional photographers would like to see registration fees kept to a minimum and, if possible, reduced. Simultaneously, both PPA and ASMP recognize the need of the Copyright Office to generate sufficient revenues in order to serve the Library of Congress and the public, including the photographic community. We fully understand and appreciate the financial constraints under which the Copyright Office functions.

In seeking to balance these conflicting considerations, it seems to us that the Copyright Office has done an admirable job of suggesting a partial solution, as well as a convincing rationale for it, in its Notice of Inquiry. Most of the members of our respective organizations are freelance professionals, working as independent contractors and retaining the copyrights to most of the photographs that they produce. For reasons described above, their ability to register significant percentages of their photographic works is very limited, with the result that the overwhelming majority of photographic works go unregistered. According to an informal 2011 survey of PPA members, 84% reported that they never register their works, 11% said that they occasionally registered, and only 1% said that they always registered their works. A reduction in registration fees at any level appears likely to result in more registrations, producing more gross fees for the Copyright Office, more works for the collection of the Library of Congress, an expanded public record, and greater protection for professional photographers.

Fortunately, the Copyright Office has identified a valid and convincing reason for being able to offer a reduction in fees for one specific type of registration: registrations by single authors who are also the sole copyright claimants of single

works. The rationale is that such applications tend to be simpler and, therefore, take less time and cost less money for the Copyright Office to process, than other, more complicated registrations.

The Copyright Office asks in its Notice of Inquiry whether a proposed lower fee for such registrations should be limited to online registrations, since they seem likely to be simpler and/or faster to complete and examine. While that may be true, under the current eCO system, only registrations of unpublished works may be completed completely online. Registrations of published works require that the application be completed, at least in part, in hard copy. Until such time as that situation changes, and all registrations can be completed online, it appears to us to be counterproductive for the Copyright Office to reduce fees for simple registrations only if they are completed online: That distinction would prevent the benefit of a reduced registration fee from extending to those works that probably need the protection of registration the most.

II. Other Special Services

The Notice of Inquiry also solicited public comment as to whether the Copyright Office should offer additional special services on a fee-for-service basis. We would like to use this opportunity to suggest more formally a project that we have previously mentioned to the Copyright Office: the establishment of a flat-fee account that would allow professional photographers, and perhaps other categories of copyright claimants, to pay a fixed annual sum that would cover an unlimited number of registrations. Ideally, such an arrangement would be coupled with the creation of an interface that would allow professional photographers to register copyright claims in digital images with the click of a single button within the photographers' digital image workflow. Such a system would drastically increase the numbers of online registrations of photographs without a proportionate increase in the processing and examining time spent by Copyright Office staff. Since many of the fields in the application would be standardized and routinized for each participating photographer, there would be minimal review of those fields required of Copyright Office staff.

Obviously, many details would need to be worked out, but our two organizations believe that it would be in the best interest of everyone, from Congress to the public, to the photography industry for the Copyright Office to pursue the possibility of such a system in earnest. We look forward to the opportunity of exploring the possibility of creating such a system further with the Copyright Office and, hopefully, to developing and implementing such a system.

SUMMARY

In summary, ASMP and PPA thank the Register of Copyrights for this opportunity to comment on the anticipated proposed revised fee schedule. We believe that it would be to the benefit of all parties for registration fees to be reduced for simple registrations of single works where there is a single applicant and that applicant is the sole author and sole copyright owner of the work; that the fee reduction should apply whether the registration is submitted online or in hard copy, at least until such time as all registrations may be completed online; and that the Copyright Office should explore the possibility of creating fixed-fee accounts for professional photographers who submit applications online through an automated function of their digital asset management programs.

Respectfully submitted by American Society of Media Photographers and Professional Photographers of America.