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May 3, 2012

Office of the General Counsel
U.S. Copyright Office
James Madison Memorial Building
Room LM—401
101 Independence Avenue, S.E.
Washington, DC 20559-6000

Re: Copyright Office Proposed Fees (Docket No. 2012-1, March 21, 2012)

Dear Sirs:

Pursuant to the proposed rule changes wherein the Copyright Office is proposing to raise certain fees for services provided by the Copyright Office, I wish to submit the following comments concerning the Office's proposal given its notice in the Federal Register (FR Doc. 2012-7428, filed March 28, 2012) ("Notice").

FEES STUDY

The Copyright Office indicates that a study was done to review the fees and actual costs of the Copyright Office but did not provide the study as part of its Notice. Usually it is made available.

ONLINE REGISTRATION FEES

The Notice states that the Copyright Office, for the fiscal year 2011, recovered only 64% of its costs to process online registrations. The current online registration fee is \$35 and it is being proposed to raise it to \$65, which based on this 64% amount, would be well over 100% recovery of their costs to examine the online claims. At the very most, the Copyright Office should only recover 100% of its costs which would appear to be \$55, not \$65.

I would also argue that the Copyright Office should take steps to reduce the costs for processing these claims and thus not need to so greatly increase the fees to recover their costs. I will give a perfect example of how this can be done and I am sure that there are others. I recently received a large number of rejects of online applications wherein the examiners asked to confirm that the claimed works had not been previously published

nor registered. At first I was astonished that I would be asked this—isn't it clear after all on the application form. However, I compared the old Form TX where one clearly answers these questions to the online form where it is not so clear. Same with filing the published version of a previously registered unpublished work, this was on the Form TX but it is not on the online application.

I would also recommend that a survey be done internally of the examiners to find out what the common errors made by applicants are that then generate correspondence or time for the examiners to amend the applications. These common errors along with what to do about them could be posted on the Copyright Office for use by those making applications. This would avoid and/or reduce correspondence and examining times by the examiners and thus would reduce the costs of the Copyright Office for reviewing the applications.

RENEWALS

The current fees for the Form RE are \$115 and for the Form RE Addendum is \$245 for a cumulative registration fee of \$360. The Copyright Office is proposing to reduce these fees to \$100 for the Form RE and to \$100 for the Form RE Addendum for a cumulative registration fee of \$200—compared to a propose online registration fee of \$65. I support, for the reasons given below, the lowering of renewal fees but also feel that they be lowered even further.

Traditionally the fees for the Form RE were always less or the same as the basic registration (or Form A, B, TX, etc.) and in speaking to a former head of the Renewals Section, the reasoning was that the renewal did not require very much time for examination. By way of example (and this is based on the limited available records I have), in 1965, the basic registration fee was \$6 and the renewal fee was \$4. In 1991, the fees were \$20 for both the basic registration and renewal. In about February 1999, the basic registration fee was raised to \$30 and the renewal fee was raised to \$45 (\$60 when filed with a Form RE Addendum). Effective July 1, 2002, the basic registration fee remained at \$30 but the Form RE fee was raised to \$60 and \$30 for an RE Addendum. Effective July 1, 2006, the basic registration fee was raised to \$45 and the fees for the Form RE was raised to \$75 and raised to \$220 for the RE Addendum. Then in 2008 the fees for the Form RE were raised to \$115 and raised to \$245 for the RE Addendum which made a cumulative fee of \$360.

The basis given in the Notice for current proposed fees of \$100 for the Form RE Addendum and \$100 for the Form RE, for a cumulative registration fee of \$200, is “renewal registration primarily serves those parties who need a certificate of registration for various commercial purposes.”

The idea that those who would file a Renewal and Renewal Addendum would only have “various commercial purposes” omits a very major point. For works to be registered that were published between January 1, 1964 and December 31, 1977, the

Form RE Addendum and Form RE are the ONLY applications that can be used to obtain a basic copyright registration.

Additionally, in October 2007, new Form RE and Form RE Addendum were put into effect and any earlier versions of these forms were made obsolete and no longer used. These new forms include expanded instructions so that applicants can fill them out with less errors and thus less examining time for the Copyright Office. The forms themselves were revised to provide more information and details which was meant to not only provide details of ownership and title to the public but also reduce the amount of time the staff of the Copyright Office were required to answer questions of the applicants and reduce the examination time because of additional information provided that earlier would have required correspondence. This should reduce the costs for examining these applications when submitted, it should be considered now, newly, to lower the fees.

When used for a basic registration, the Form RE Addendum and Form RE are reviewed at the same time and by the same examiner which should be taken into account in cost analysis. For some reason they seem to be treated separately.

As mentioned above, the Form RE, and possibly the Form RE with the RE Addendum, is the only form that can be used for works published between January 1, 1964 and December 31, 1977 wherein an author of an individual work published in a collective work can register and record his ownership in that individual work. There is no other mechanism for them to do so. The Second Circuit Court of Appeals has expressed the need for an individual author to register the copyright in their individual contribution in the *Morris v. Business Concepts, Inc.* case (*Morris v. Business Concepts, Inc.*, 259 F.3d 65, 59 U.S.P.Q.2d 1581 – 2nd Cir. 2001). Having a very high renewal fee might preclude an author from protecting his copyright.

The cumulative fees for renewals should be at the same level as the other basic registrations fees for works after January 1, 1978.

SUMMARY

We should be encouraging registration and recordation to ensure the authors of works are protected and can be located, this proposal to raise fees would seem to be going away from that and perhaps that should be reviewed/proposed as an alternate approach of Congress subsidizing the Copyright Office as it has in the past since there is a large public interest.

The Register of Copyright is permitted to set fees by regulation rather than by statute so long as a specific procedure is followed and one of the points of this procedure is: “3. The fees shall be fair and equitable and give due consideration to the objectives of the copyright system.” (See pages 5 and 6 of the Copyright Cost Study and Fee Recommendations dated September 30, 2008).

Additionally, in line with getting help and better funding from Congress to solve any financial difficulties:

“The Congress has traditionally supported the Copyright Office’s view that registration provides benefits to the public and to the Library of Congress that balance the need to recover costs. Registration benefits the public in general and users of copyrighted works in particular because it provides a record of copyright ownership which persons who wish to license rights to use a work may consult in order to be able to contact the copyright owner. The result is greater use of and exposure to creative works and more creation of new derivative works based on registered works. Raising copyright registration fees to a level that causes some copyright owners to refrain from registering their works would therefore be harmful to the public interest.” (See page 9 of the Analysis and Proposed Copyright Fee Schedule to Go into Effect July 1, 2006, dated March 1, 2006).

Further to this and to keep the fees at their current levels or at the very least not raise them to the proposed amounts, we would support the Copyright Office’s request to Congress to restore the Copyright Office’s base funding of \$2 million, as stated in the Registrar’s testimony to both the House and the Senate recently:

“The enacted budget for fiscal 2012 directed the Copyright Office to utilize no-year funding (collected from fees for services) to offset expenses, effectively reducing our spending ratio of appropriated dollars to fees at the same time that fees and receipts were lower than anticipated. To ensure sufficient funding for operations in fiscal 2013, including the ability to cover necessary staffing and critical technology upgrades when fees fluctuate, the Office requests restoration of its base appropriations. As outlined in *Priorities and Special Projects of the United States Copyright Office: 2011-2013*, the Office is in the midst of a multi-year evaluation of fees, services, technology and other issues that will inform its future strategies for intelligent growth.”

If there is any further information that I can provide, please let me know. I can be contacted at the above address and phone number or emailed at ryland@authorservicesinc.com.

Very truly yours,

Ryland Hawkins