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May 14, 2012

**VIA ELECTRONIC SUBMISSION**

Library of Congress  
 Copyright Office  
 [Docket No. 2012-1]  
 Copyright Office Fees

**Re: Comments of Picture Archive Counsel of America (PACA)**

The Picture Archive Council of America, Inc. (“PACA”) appreciates this opportunity to comment on the Copyright Office’s Notice of Proposed Rulemaking (NPRM) proposing to adopt new fees for the registration of claims and other services that the Copyright Office provides.

PACA is a not-for-profit trade association whose members consist of entities and individuals of every size that are engaged in the archiving and distribution of images for purposes of licensing, either directly or indirectly. Founded in 1951, PACA’s membership includes 150+ companies worldwide providing photography, footage, animation, and illustration. PACA’s mission is to foster and protect the interests of the picture archive community through advocacy, education and communication. A primary purpose is to actively advocate copyright protection and copyright education.

PACA, on behalf of its members has significant concerns regarding the proposed increases in the NPRM for registering both individual works and group claims. The increases are substantial, and if enacted would even further discourage the efforts of PACA members to submit works with the Copyright Office for registration purposes.

While PACA acknowledges that the Copyright Office’s needs to recover some of its operational costs in application fees, there are substantial benefits to the general public in encouraging registration of works by all copyright owners. Registration provides the deposit material that has made the Library of Congress a rich resource for works of all types. Most importantly, even though it is optional, no US copyright owner may enforce its copyright against an infringer unless the work is registered and is deprived of the benefits of statutory damages and attorney’s fees unless the infringed work is registered before the infringement. The Copyright Office should consider the impact of increasing



the expense of registration on copyright owners of visual works that already have difficulty registering works due to the large quantity of works created in a relatively short period of time compared to other creators before any change in fees is implemented.

The Copyright Office has historically worked with PACA and its members to lessen the burden of registration. PACA members are responsible for the licensing of millions of photographs created by professional photographers. These images are made available for licensing to users of images via online databases that allow users to search, select and license images instantaneously online. Unfortunately, the same images can be easily redistributed without authority of the copyright owner or the licensing representative, causing real economic hardship to the image licensing community, who rely on licensing income as a source of their livelihood.

Registration for a large number of photographs, published online on behalf of many individual photographers, has always been challenging. The Copyright Office has long recognized the need to provide incentives to register these works, as well as the need to offer registration systems that are not overly administratively and financially burdensome to a particular class of authors. The Copyright Office worked with PACA members in the past in developing practical solutions to the problem of publishing a large volume of copyrightable works on a frequent basis, while protecting the underlying images. Unfortunately some district court judges have chosen to override the authority and judgment of the Copyright Office and in PACA's opinion, misinterpret the Copyright Act and the registration requirements, creating uncertainty as to the validity of the registration of millions of previously registered photographs. PACA is aware that the Copyright Office may revise its requirements with respect to the registration of photographs. Any fee increase should take into consideration the method of registration that will be in place in order to register photographs, either by photographers directly, or by their licensing representatives that upload, display and make the images available for potential licensing. The need for an administratively, as well as financially feasible method of registering photographs is as critical as ever in an almost all digital environment requiring more copyright enforcement.

The registration fee increases proposed in the NPRM would, in particular, provide significant disincentives to photographers and their representatives. The NPRM proposes to increase the basic fee for registering an original work of authorship electronically from \$35 to \$65. This is the largest percentage increase in fees the Copyright Office ever has proposed. It would be the largest increase for basic registration in absolute dollars ever. The NPRM proposes even greater absolute dollar increases for paper filings and for group registrations published photographs. The magnitude of the fee increases would disproportionately impact individual photographers and small companies with tight budgets. The likely result is less registrations, less works deposited with the Copyright Office and disproportionately preventing these creators from successfully enforcing the copyrights in the works they create.





In addition to the fee increase, the proposal raises additional concerns. The proposed lower registration fee for “a single author who is also the claimant for the online filing of a claim in a single work that is not a work made for hire” captures many individual authors and small companies who are incorporated for a variety of business purposes. This exception could be redefined so that these individual authors who incorporate for business purposes are not excluded from an exception that is intended for their use.

PACA recommends that the Copyright Office offer reduced fees for those copyright owners who submit large numbers of copyright registrations at or around the same time. These owners already face substantial copyright costs associated with registering their works. These registrations should be processed more efficiently than if the Copyright Office was processing the same number of applications from different owners. A discount for such large-volume filings may be appropriate.

PACA appreciates that the services the Copyright Office provides are labor intensive. With registering volumes of individual images, third parties likely have existing or readily adaptable technology that could help streamline or reduce some of the tasks required by the Copyright Office. For those copyright owners who submit large numbers of works at the same time, having an API that works with the Copyright Office’s server in the submission and uploading process would reduce the administrative costs on the copyright owners’ side and at the same time reduce the administration costs to the Copyright Office in ingesting and identifying large numbers of applications and registration deposits. Third-party technology companies working with the Copyright Office may be able to develop solutions that could ease the financial burden on all parties.

PACA would like to continue to work with the Copyright Office to establish registration practices that are enforceable, practical and not prohibitively expensive. Perhaps photographers and those registering works on their behalf should be treated separately from the classes of other works based on the difficulty in registration. (Compare the works of one photographer to that of a novelist. The first can create thousands of images on one assignment, the latter may take years to create one manuscript, yet the photographer does not necessarily earn more from the creation of a multiple of works than the writer who creates one work every few years). The benefit of Copyright registration is too great, both to the individual author as well as to the public, to create a system that is out of reach to an entire class of authors. We urge the Copyright Office to consider alternatives to the fees proposed.

A handwritten signature in blue ink that reads "Nancy E. Wolff". The signature is written in a cursive, flowing style.

Nancy E. Wolff  
PACA Counsel