



*Analysis and Proposed
Copyright Fee Schedule
to Go into Effect July 1, 2006*

Submitted to Congress by

Marybeth Peters
Register of Copyrights

March 1, 2006

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ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE

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Introduction

The Copyright Office proposes herein a new schedule of fees to be implemented July 1, 2006. The proposed fees were determined based on the guidelines set forth in legislation¹ that permits the Register of Copyrights to set fees by regulation rather than by statute, according to the following procedure:

- 1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. This study should also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.
- 2) On the basis of the study, the Register is authorized to fix fees at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation.
- 3) The fees should also be fair and equitable and give due consideration to the objectives of the copyright system.
- 4) The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120 days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.

This is the third schedule of fees set forth since adoption of the new fee setting procedure. The first was in 1999 and the second in 2002. In addition to the proposed new fee schedule, this report contains the analysis Congress requires the Office to submit for its consideration. If adopted, the schedule of new fees for services identified in the statute will be set by regulation to be effective July 1, 2006. This report also provides:

¹ Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997), codified at 17 U.S.C. § 708(b).

- A brief recounting of the background on setting Copyright Office fees.
- A discussion of how the Office prepared its cost study and determined the proposed fees.
- A review of how decisions were made to adjust fees.

I. Background on Copyright Fees**A. Fees previously set by Congress**

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

In 1965, Congress increased the registration fee from \$4 to \$6, bringing recovery of Office expenditures from 62 percent to an estimated 80 percent. A 1978 fee increase to \$10 brought receipts to about 80 percent of expenditures, but by 1989, receipts had again diminished to 40 percent of the Office's expenditures. The last legislatively enacted fee increase, to \$20 effective in 1991, raised receipts to about 65 percent of expenditures; significantly, an amendment to increase the fee to \$30, which would have achieved full-cost recovery, was defeated in the House Judiciary Committee.

Congress consistently established fees that took into account the cost to the Copyright Office of providing services, but provided appropriations that cover the cost of the Office's policy and international programs and its public information services. This formula reflects the fact that the Copyright Office has come to do much more than register copyright claims over its 105 year existence as a department of the Library of Congress. It has increased its services to the Library, the United States Congress, the Executive Branch, and the American public, and expanded its national and international policy roles. Consequently, both Congress and the Office have recognized that not all Copyright Office costs should be borne by users of its fee services.

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

The Copyright Office does not recommend a 100 percent fee-based registration system, since the Office performs some valuable services not directly related to maintenance of the public record. Public information services, rulemaking, participation in the development of national and international copyright policy, and preparation of reports and studies for the Congress are among the services of a public nature performed by the Copyright Office, and the Committee can reasonably expect the taxpayers to shoulder some of this burden.²

The first fees set under the new system took effect in mid-1999. In FY 2001, the Office reported offsetting collections amounting to \$21,601,045 against the cost of providing the services, covering just over 66% of those costs. The Office collected \$23,788,227 in fees in FY 2005, sufficient to offset only 56.7% of the cost of providing the services.

² H.R. Rep. No. 101-279 (1989).

B. Overview of the Copyright Office budget

Copyright Office basic funds support activities associated with administering the copyright law, including registration of claims, recordation of documents, and related services. The Office's Licensing and Copyright Royalty (CARP) work is funded fully by royalty fees. The full cost of all three Copyright Office appropriations in FY 2005 was \$45,945,845.

The Copyright Office net appropriation, \$19,972,928 in FY 2005, represents funding provided by Congress rather than through fees. The net appropriation supports policy, international, and public information costs and the cost of obtaining copies of copyrighted works needed for the Library's collections, which are unrelated to fee services, as well as those costs not fully recovered through fees.

The Copyright Office budget is separate from that of the Library of Congress, although there are shared resources stemming from budgeted expenditures. The Library of Congress provides certain intra-entity equipment and services that support the Copyright Office in the Offices of Human Resource Services, Financial Services, Integrated Support Services, and Information and Technology Services. In return, the Copyright Office provides the Library of Congress with very valuable materials, including books, serials, maps, music, and motion pictures, for the Library's collections or use in its exchange programs. The value of these deposits is increasing and was estimated at more than \$39 million in FY 2005.

C. Development of a cost study

The cost study for this proposed fee schedule was developed by the Copyright Office based on a model created as part of its business process reengineering (BPR) initiative. In FY 2000, the

Office hired PricewaterhouseCoopers to assist in developing a BPR project plan. One task was to analyze the current cost of providing various services in the “as-is” environment. The cost study forming the basis for the recommended fee schedule uses the BPR model, with adjustments to omit non-fee services and include some fee services that were not included in the BPR study. The cost analysis used the activity based costing methodology for determining the Office's full cost for each service.

The activity-based costing methodology used in the study was approved in Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, No. 4, published by the Office of Management and Budget on July 31, 1995. Under this approach, resource costs are assigned to activities, and activities are assigned to specified services. Most Copyright Office activity costs were associated directly with one or more fee services. Certain general and administrative costs related to fee services were treated as indirect costs and were allocated proportionately across all fee services; others (e.g., postage, phone service, and storage costs) were allocated to the specific service or services they supported.

The cost study identified direct and indirect costs and concluded, as did the 1998 and 2001 cost studies, that some costs should not be included in the analysis. The study omits purely policy and public information costs, e.g., costs related to legislative, regulatory, judicial, and international responsibilities, which do not relate directly to any fee service. Excluded policy expenses include those associated with the Office of the General Counsel, the Public Information Office, the Publications Section, and the Office of Policy and International Affairs. The Office also excluded the costs of the Copyright Acquisitions Division, whose primary responsibility is securing copies of

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

The full cost to the federal government would include inter-entity costs that are funded by other federal agencies (e.g., building services performed by the Architect of the Capitol and litigation support provided by the Department of Justice.) These inter-entity costs are not reported to the Copyright Office. They are not compensated and are not included in the cost study. Full costs also include intra-entity costs, i.e., equipment and services provided by the Library of Congress. With the exception of costs that support the Licensing and CARP programs, some special services in support of BPR and copying costs that are passed on to the user, these costs are not compensated. The costs reimbursed under Copyright basic are included in the cost study. Those plus the direct and indirect costs to the Copyright Office were used as the basis for determining cost recovery for statutory services.

The cost study was accompanied by analysis which considered statutory fee-setting requirements and economic factors. The determination to recover full or partial costs for a particular fee was based on the statutory requirement that fees be fair, equitable, and give due consideration to the objectives of the copyright system. In some cases, market pricing and the likely effect on usership were considered. Where the private sector provides a service comparable to the one provided by the Office (e.g., searching public records), the fee charged in the private sector was considered.

II. Evaluation of Cost Study Results and Other Congressional Criteria

Based on the cost study and accompanying analysis, the Office is proposing adjustments for certain fees. The fee schedule is contained in Section E of this report.

A. Rationale for adjusting certain fees

The Office determined that most fees for services mandated by statute should be adjusted to reflect any increased costs of providing the various services. Services the Office provides that benefit only or primarily the user of that service should be set at a level that will recover the full cost to the Office of providing the service. The Office observes that some of these fees are for optional services; others may be commercial in nature. For example, since renewal of a copyright registration is now automatic, a renewal claimant bases the determination whether or not to seek a renewal registration on his or her commercial interest.

Those statutory fees that will be adjusted to achieve or maintain full cost recovery include the fees for filing a supplemental registration, filing a registration for a renewal or for a group of related works, issuing a receipt for a deposit under §407, recording documents of the various types, and providing additional certificates. Full cost recovery includes a calculation for expected elasticity, or the percentage decline in usership that results from raising fees for some services.

The fee for certifying documents will be nearly doubled and will recover nearly full cost. The fee for reporting a search of Copyright Office records will increase as well, but the increase is based on competitive prices in the private sector and will not recover 100% of the cost of providing the service. The fee also reflects the need not to undercut or greatly exceed the price of those in the

private sector who provide the same service. The recommended fee is in line with the rates charged by various providers.

The basic filing fee for copyright registration will increase by 50% over the fee set in 1999. The fee is expected to recover approximately 95% of the cost of the registration program. For the reasons described below in section II.B. of this report, the Office does not seek 100% cost recovery for basic registration filings.

The fee for one little-used service, filing of a notice of intention to obtain a compulsory license, will not increase. Because of the low volume of this fee service, increasing the fee to recover full cost would bring in only about \$12,000 if usership remained the same, but the high fee would be a great deterrent to filers. Consequently, the Office believes that negative elasticity would significantly erode receipts while the overall cost of the program is proportionately small. The automation of this service in 2007 will reduce costs to ensure that a fee can be set that will recover costs without being punitive to filers.

B. Rationale for adjusting the basic registration filing fees

Basic registration. The basic registration filing fee was last raised in 1999. There are a number of factors that weighed against adjusting the filing fee in 2002. Among them were the level of cost recovery the fee enjoyed in FY 2000 and FY 2001, the large increases imposed on the public in recent years, the negative effects of the decline in registrations that follows every fee increase, and the costs associated with increasing the fee. This year, the Copyright Office intends to increase the basic registration filing fee along with the other statutory and non-statutory fees. The Copyright

Office intends for the basic filing fee to support the costs of the registration program at a level approaching 100%. Full cost recovery is not sought for the following reasons.

- 1) The Copyright Office's electronic filing system is scheduled to become universally available next year. The Office anticipates setting new fees at that time. The Office anticipates charging a lesser fee for electronic filers and a greater fee for those who continue to file paper applications and payments. The dual fee will not only reflect the reduced cost of processing electronic claims, but will provide an incentive to potential electronic filers.
- 2) 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.
- 3) A 50% increase in the filing fee this year will likely deter some filers, but will cause less of an impact than a greater increase would. The Office expects the number of registrations for works that are selected for the Library of Congress collections to be impacted only slightly. The greater decrease would be for unpublished works that would not be placed in the Library's collections. This decrease is mitigated by the fact that registration is permissive for all works and unpublished works have a lesser risk of being infringed because they are not usually accessible to the public.

Group registrations. Other basic registration filing fees, those that provide the option of grouping similar works into a single registration, will also be increased.

Group registration of serials is permitted for issues that are published in a three-month period. Before filing, applicants must enter the Library of Congress in their subscription lists for two copies of each issue. Then, filers may group claims to save costs and paperwork. The fee for

these claims is increased from \$15 to \$25 per issue. The new fee will recover full cost and reflects the significant benefit it provides to filers.

Group registration is also available for newspapers and newsletters. One month's issues may be grouped and registered for \$55. This fee is also being increased to keep up with inflation and will recover the full cost of providing the service because of the financial and administrative benefits it provides to filers. The new fee will be \$70.

A newer service, group registration for published photographs, has not had a separate fee in the past. When the Office initiated the service, it could not estimate the cost of providing this service, so the basic registration filing fee was charged. In this cost study, the Office established that the cost of processing a group registration for published photographs greatly exceeded the cost of processing a claim for a single photograph. The Office will continue to provide this service, which is of great benefit to filers, but it is increasing the fee to \$75.

C. Projected revenue based on proposed fees

The Copyright Office anticipates increased revenue from the new fee schedule for statutory services. In FY 2005, fee receipts for all services totaled \$23,788,227. Toward the end of FY 2007, when the Office launches its new electronic filing system, it will likely again adjust its basic registration filing fees. Without attempting to calculate additional receipts based on that as yet undetermined fee increase and barring any unanticipated decline in receipts, it is estimated that total FY 2007 fee receipts will reach \$32,007,055. For the three months of FY 2006 that the new fees will be in effect, the Office estimates that additional receipts will total \$2,745,609.

D. Conclusion

The Copyright Office believes that the proposed schedule of fees meets the statutory goals of fairness, equity, and due consideration to the objectives of the copyright system, and we respectfully request that Congress approve these fees as proposed in Section E of this report.

E. Fee schedule with proposed fee changes

New statutory fees § 708(a)(1)-(9) for Congressional approval:

Fee Service	Current Fee	Proposed Fee
Registration of a basic claim in an original work of authorship (Forms TX, SE, PA, SR, VA)	\$ 30	\$ 45
Group registration for serials (per issue)	\$ 15	\$ 25
Group registration for newspapers and newsletters	\$ 55	\$ 70
Group registration for published photographs	\$ 30	\$ 75
Registration of a correction or amplification to a claim (Form CA)	\$100	\$115
Registration of a renewal claim (Form RE)	\$ 60	\$ 75
RE addendum	\$ 30	\$220
Receipt for §407 deposit	\$ 10	\$ 20
Recordation of document (single title)	\$ 80	\$ 95
Additional titles (per group of 10 titles)	\$ 20	\$ 25
Additional certificate of registration	\$ 30	\$ 40
Certification of other Copyright Office records (per hour)	\$ 80	\$150
Search--report prepared from official records (per hour)	\$ 75	\$150

Estimated Value of Materials Transferred to the Library of Congress, Fiscal 2005

	Registered works transferred to other departments of the Library	Non-registration works transferred to other departments of the Library	Total works transferred to other departments of the Library	Average Unit Price	Total value of works transferred to other departments of the Library
Books	196,910	86,846	283,756		\$14,257,212
<i>Ink Print</i>	178,410	44,460	222,870	\$62.35	\$13,895,945
<i>Electronic Works (ProQuest)</i>	15,546	41,791	57,337	\$3.94	\$225,908
<i>Microfilm</i>	2,954	595	3,549	\$38.14	\$135,359
Serials	230,428	465,377	695,805		\$12,604,035
<i>Periodicals</i>	205,431	421,700	627,131	\$32.85	\$12,360,752
<i>Ink Print Newspapers</i>	21,891	41,400	63,291	\$1.00	\$37,975
<i>Microfilm Newspapers</i>	3,106	2,277	5,383	\$38.14	\$205,308
Computer-related works	7,198	2,659	9,857		\$2,832,464
<i>Software</i>	2,519	117	2,636	\$27.67	\$72,938
<i>CD-ROMs</i>	1,440	2,542	3,982	\$693.00	\$2,759,526
<i>Printouts</i>	3,239	0	3,239		<i>indeterminate value</i>
Motion Pictures	10,383	1,768	12,151		\$6,344,068
<i>Videotapes</i>	9,843	1,758	11,601	\$87.55	\$1,015,668
<i>Feature Films</i>	540	10	550	\$9,688	\$5,328,400
Music	51,838	2,684	54,522	\$51.82	\$2,825,330
Dramatic Works, choreography and pantomimes	1,143	0	1,143	\$62.35	\$71,266
Other works of the performing arts	119	0	119	\$51.82	\$6,167
Sound Recordings	30,249	3,195	33,444	\$14.22	\$475,574
Maps	1,661	59	1,720	\$36.00	\$61,920
Prints, pictures, and works of art	5,903	0	5,903	\$29.10	\$171,777
Total	535,832	562,588	1,098,420		\$39,649,813

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

2 60% of "SERIALS" are selected for the collections, except in the case of Microfilm Newspapers (100% of which are selected).

3 Includes 36 copies selected by the Library under motion picture agreements.