



**PROPOSED SCHEDULE AND ANALYSIS
OF COPYRIGHT FEES TO GO INTO EFFECT
IN SPRING 2020**

SUBMITTED TO CONGRESS OCTOBER 16, 2019



UNITED STATES COPYRIGHT OFFICE



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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

The Honorable Mike Pence
Vice President of the United States
President of the Senate
United States Senate
Washington, D.C. 20510

October 16, 2019

Dear Mr. Vice 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 a large share of the Office's operational budget.

As required by the statute, the proposed schedule contemplates both the costs to 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 copyright owners, prospective users of copyrighted works, as well as the public at large, and that neither is required as a condition of copyright protection.

In determining its new fee schedule, the Office conducted a cost study and 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 in the second quarter of fiscal 2020.

Thank you for your consideration of this proposed fee schedule.

Respectfully,

A handwritten signature in black ink that reads "Karyn A. Temple".

Karyn A. Temple
Register of Copyrights and
Director, United States Copyright Office

Enclosure



The Register of Copyrights of the United States of America

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The Honorable Nancy Pelosi
Speaker of the House of Representatives
United States House of Representatives
Washington, D.C. 20515

October 16, 2019

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Register of Copyrights and
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Executive Summary

Approximately every three to five years, the U.S. Copyright Office conducts an analysis of its fees for Office services and adjusts those fees to take into account changing costs and work processes.¹ The Copyright Office manages its fee studies pursuant to section 708 of title 17, 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 title 17, registration, recordation, and other Office fees must be “fair and equitable and give due consideration to the objectives of the copyright system.”² Fees may be adjusted only as reasonably necessary, and may take account of inflation.³ If, after careful review, the Copyright Office concludes that fees should be adjusted in light of this standard, it will propose modifications to specific fees to better fulfill its statutory duty to administer the nation’s copyright system for the benefit of the public.

The Copyright Office commenced this fee study in 2017. As part of its review, the Copyright Office contracted with an outside consultant to formally analyze the Office’s fee structure as well as the operation of specific costs, using well recognized industry standard accounting principles. This represented the first time in 17 years that the Copyright Office had engaged an outside consultant to assist in the formal analysis and review of its costs and fee structure. In addition to consideration of formal economic principles using guidelines provided by its outside consultant, the Office also gave “due consideration to the objectives of the copyright system,” which are “to encourage the production of original literary, artistic, and musical expression for the good of the public.”⁴ For example, in recognition that copyright registration and recordation are voluntary under U.S. law, the Office endeavored to set fees at levels that maximize the recovery of reasonable costs while continuing to encourage active participation in the copyright system, in furtherance of its ultimate objectives.

In 2018, the Copyright Office published an initial proposed fee schedule in the Federal Register and provided opportunities for public comment.⁵ The Copyright Office received 158 comments,⁶ which the Copyright Office reviewed thoroughly in developing a revised proposed fee schedule.

¹ See 17 U.S.C. § 708 (establishing Register of Copyrights’ authority to set fees, as well as fee setting standards). The Copyright Office last adjusted its fees in 2014, including introducing a new reduced fee for single author works. See Copyright Office Fees: Registration, Recordation and Related Services; Special Services; Licensing Division Services; FOIA Services, 79 Fed. Reg. 15,910 (Mar. 24, 2014).

² 17 U.S.C. § 708(b)(4). Note, however, that this language does not apply to certain statement of account fees, which are not subjects of this Analysis. See *id.* § 708(b) (excluding statements of account from categories of fees that may be adjusted by the Register by regulation).

³ See 17 U.S.C. § 708(b)(2) (“The Register may . . . adjust fees to not more than that necessary to cover the reasonable costs incurred by the Copyright Office . . . plus a reasonable inflation adjustment to account for any estimated increase in costs.”).

⁴ *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 524 (1994).

⁵ Copyright Office Fees, 83 Fed. Reg. 24,054 (proposed May 24, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2018-05-24/pdf/2018-11095.pdf>.

⁶ The comments can be viewed through the Copyright Office website at <https://www.copyright.gov/rulemaking/feestudy2018/>.

The comments ranged from acknowledging the need for fee adjustments overall⁷ to challenging proposed fee increases.⁸

The revised schedule modifies current fees in a number of instances, and maintains certain fees for other services. For example, the Copyright Office proposes increasing the Single Application fee to \$45 and the Standard Application fee to \$65, as well as increasing group application fees for works such as newspapers and unpublished works. The Office also proposes maintaining some group application fees at current levels (such as photographs), while reducing fees for electronic filing of application corrections or amplifications.⁹

The Copyright Office also thoroughly considered the impact of its IT modernization on fees, which was an area of significant public interest in the comments. The Copyright Office must necessarily improve its technology to better serve all in the copyright ecosystem, as recognized by Congress on several occasions.¹⁰ Funding for these improvements, which will benefit both frequent users of the copyright system as well as the public at large, is derived from both appropriated funds and fees.

Although initially using a model that would increase fees to fund modernization, the Copyright Office has adjusted its approach. After reviewing the public comments voicing concern that the proposed increase in fees would be unduly high after factoring in the projected costs of these historic and ambitious initiatives, the Copyright Office now proposes to reduce certain increases that were proposed in the 2018 Federal Register notice, so that the impact of modernization costs on small, high-volume creators and users of the most common and elastic registration services is lessened.

⁷ See, e.g., Motion Picture Association of America, Inc., Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 1 (Sept. 21, 2018) ("While no user of a service wishes to pay higher fees, we understand that the Office requires additional revenue to undertake much-needed IT modernization projects, and that a substantial portion of such revenue must come from user fees.").

⁸ See, e.g., American Association of Independent Musicians ("A2IM"), Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 1 (Sept. 19, 2018) ("A2IM Comments") ("Any further increase in user fees, will negatively affect the small and medium sized enterprises that A2IM represents and may discourage some independent labels from registering their copyrights.").

⁹ See *infra* Part V.

¹⁰ See, e.g., H.R. REP. NO. 115-199, at 19 (2017) ("[M]odernization of the USCO's electronic copyright registration system is of utmost importance."); H.R. REP. NO. 114-594, at 17 (2016) ("The Committee recognizes and strongly supports the need for a robust information technology modernization effort within the Copyright Office to support the growth of creativity and commercial artistic activity in our nation and to effectively serve users and copyright owners in the 21st century."); S. REP. NO. 114-258, at 39 (2016) ("The Committee fully understands and supports the need for improved IT infrastructure and modernized software systems for the Copyright Office."); H.R. REP. NO. 114-110, at 16 (2015) ("In order to serve the copyright owners and the copyright community in the 21st century, a robust modern information technology (IT) operation will be necessary."); S. REP. NO. 113-196, at 40 (2014) ("[T]he Copyright Office is currently in need of significant IT and related upgrades to be fully interoperable with the digital economy it serves.").

The fees proposed herein will take effect in the second quarter of fiscal 2020 pursuant to regulations to be issued by the Register of Copyrights unless, within 120 days of the date of the submission of these proposed fees to Congress, Congress chooses to enact a law stating that it does not approve the new fees.¹¹

I. Budgetary and Legal Framework

A. Funding Sources

The Copyright Office has two main budgetary sources that fund most of the Copyright Office's core operations:¹² (1) fees for its services; and (2) congressional appropriations.¹³ Historically, fees have made up a majority of the Copyright Office's budget, ranging from 59% to 67% between 2009 and 2014. This funding balance reflects the fact that many Copyright Office services benefit not only individual copyright owners but also the general public by, among other things, incentivizing cultural development and providing the public with a searchable database of copyright registration and ownership information. Further, based on the outside consultant's analysis, it would not be possible to fully fund the Office's operations through user fees, since the requisite fee hike would depress participation in the system beyond the levels necessary to recoup the desired amount of fees.¹⁴

Congress decides, in the course of the annual federal appropriations process, how much money the Copyright Office can use to fund its operations, meaning that the Office may spend incoming fee revenue, but only up to the amount authorized by Congress. If annual fee collections exceed the Copyright Office's annual spending limit, those fees are retained and may be made available

¹¹ See 17 U.S.C. § 708(b)(5). Note that this Schedule and Analysis 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 cable and satellite fees or requests for reconsideration, are adjusted separately under a different statutory provision. See 17 U.S.C. § 708(a) (authorizing Register to fix fees for "other services . . . based on the cost of providing the service" and establishing fee framework for statements of account).

¹² This includes the majority of payroll-related expenses.

¹³ This budget is referred to as the "Basic Budget" within the Copyright Office. In this Proposed Fee Analysis and Schedule, any references to the budget relate to the Basic Budget. Note, however, that the Copyright Office has two additional budgets *not* the subject of this Proposed Fee Schedule and Analysis: (1) the Licensing Budget, which is derived entirely from licensing royalty collections otherwise payable to copyright owners and filing fees paid by cable and satellite licenses pursuant to statutory licenses administered by the Copyright Office; and (2) the Copyright Royalty Judges Budget, which funds the Copyright Royalty Board ("CRB"). Although the CRB is not a part of the Copyright Office, the Office administers the CRB's budget on behalf of the Library of Congress. In addition to the Copyright Office's basic budget, the Copyright Office Salaries and Expenses Appropriation includes a budget for the Copyright Royalty Judges and for the Copyright Office's Licensing Division. And, although the Copyright Office is organizationally within the Library of Congress, it receives a separate appropriation. See S. REP. NO. 115-274, at 40-43 (2018); H.R. REP. NO. 115-696, at 16-18 (2018); Statement of Karyn Temple, Acting Register of Copyrights, Before the Subcomm. on Legislative Branch Appropriations of the S. Comm. on Appropriations (May 8, 2018), available at <https://www.copyright.gov/about/budget/2019/senate-budget-testimony-fy19.pdf> (regarding the Copyright Office's fiscal 2019 budget request).

¹⁴ See BOOZ ALLEN HAMILTON, U.S. COPYRIGHT OFFICE, FEE STUDY, QUESTIONS AND ANSWERS 2-3 (2017) ("BOOZ ALLEN Q&A"), available at https://www.copyright.gov/rulemaking/feestudy2018/fee_study_q&a.pdf.

to the Office as part of a future appropriation.¹⁵ Such authorization to offset expenses with prior-year fee balances plays a needed role in enabling the Copyright Office to meet the expectations of creators and entities—large and small—that depend on it for their commercial and noncommercial activities. The Copyright Office organizes its operations with the expectation that it will be able to draw upon any retained prior-year fees in the future to cover short-term deficits caused by fluctuations in annual fee receipts. The retained fees balance is important operationally because fee receipts can and do fluctuate unpredictably; it may be difficult to change the Copyright Office’s spending structure quickly in response to an unanticipated shortfall. Additionally, in fiscal years 2017 and 2018, prior-year balances were instrumental in supporting the Copyright Office’s modernization goals.¹⁶

B. Budgets for Fiscal 2016-2019

For this fee schedule and analysis, the initial assessment of the Copyright Office’s costs was based on fiscal 2016 budget spending analysis. For fiscal 2016, the Copyright Office had an overall annual operating budget of \$51.9 million, which came from net appropriations of \$21.9 million and authority to offset an additional \$30 million in expenses using user fees collected in both fiscal 2016 and prior years.¹⁷

While the initial assessment process began with data from fiscal 2016, this study’s recommendations are based on a review of fiscal 2016, 2017, 2018, and 2019 budget spending analysis and appropriations. For fiscal 2017, the Copyright Office had an overall annual operating budget of approximately \$61.7 million, which came from appropriations of \$21.9 million and authority to offset an additional \$39.8 million in expenses using user fees collected in both fiscal 2017 and prior years.¹⁸ For fiscal 2018, the Copyright Office had an overall annual operating budget of approximately \$64.7 million, which came from appropriations of \$27.2 million and authority to offset an additional \$37.5 million in expenses using user fees collected

¹⁵ The Copyright Act states that “fees that are collected shall remain available until expended.” 17 U.S.C. § 708(d)(1).

¹⁶ See H.R. REP. NO. 115-199, at 19 (2017) (recommending “\$28,446,000 plus authority to spend \$41,305,000 in receipts, and \$2,260,000 in prior year unobligated balances for salaries and expenses of the Copyright Office” and including funding for “copyright modernization”); H.R. REP. NO. 114-594, at 18 (2016) (“The authority to spend prior year unobligated balances of \$4,531,000 will fund the contract portion of the Data Management Initiative (\$1,091,000) and the Searchable Historic Copyright Records Project (\$3,440,000).”).

¹⁷ U.S. COPYRIGHT OFFICE, FISCAL 2016 ANNUAL REPORT 14 (2017). In addition, the Licensing Division had a separate operating budget of \$5.4 million in fiscal 2016 for administering royalty payments and royalty accounts under certain statutory licenses. This separate budget was funded by deductions from the royalty pools the division administers and from statutory license statement of account filing fees. *Id.*

¹⁸ U.S. COPYRIGHT OFFICE, FISCAL 2017 ANNUAL REPORT 15 (2018). The Licensing Division was fully funded from user fees and withdrawals from royalty pools in the amount of \$5.5 million. *Id.* The Copyright Royalty Judges had a separate operating budget of \$1.6 million in fiscal 2017. See LIBRARY OF CONGRESS: FISCAL 2017 BUDGET JUSTIFICATION 109, 129–32 (2016); STAFF OF H. COMM. ON APPROPRIATIONS, 115TH CONG., CONSOLIDATED APPROPRIATIONS ACT, 2017 at 1392–93 (Comm. Print 2017).

in both 2018 and prior years.¹⁹ Finally, for fiscal 2019, Congress approved a direct appropriation of \$42.3 million, and provided authority to offset an additional \$43.5 million in expenses using user fees collected in both 2019 and prior years. Of this total funding available, Congress included \$12.1 million for Copyright Office IT modernization.²⁰

C. Fee Types and Adjustments

Section 708(a) of the Copyright Act specifies that “[f]ees shall be paid to the 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;²¹
- 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);²²
- 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;

¹⁹ U.S. COPYRIGHT OFFICE, FISCAL 2018 ANNUAL REPORT 20 (2019). The Licensing Division was fully funded from user fees and withdrawals from royalty pools in the amount of \$5.7 million. *Id.* The Copyright Royalty Judges had a separate operating budget of \$1.7 million in fiscal 2018. *See* LIBRARY OF CONGRESS: FISCAL 2018 BUDGET JUSTIFICATION 111, 129–32 (2017); STAFF OF H. COMM. ON APPROPRIATIONS, 115TH CONG., CONSOLIDATED APPROPRIATIONS ACT, 2018 at 1469 (Comm. Print 2018).

²⁰ S. REP. NO. 115-274, at 43 (2018). Regarding IT modernization funding, Congress directed the Copyright Office to continue to work with the Library of Congress’ Office of the Chief Information Officer “to achieve efficiencies in shared services, while allowing for mission specific modernization to be the responsibility of the Copyright Office.” *Id.*

²¹ 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.

²² Section 115 permits a licensee to make and distribute phonorecords of musical works, including in digital formats, provided certain statutory requirements are met. *See* 17 U.S.C. § 115. The Orrin G. Hatch-Bob Goodlatte Music Modernization Act eliminated the need for certain notices of intention for certain mechanical licenses under 17 U.S.C. § 115. *See* Pub. L. No. 115-264, 132 Stat. 3676 (2018).

- 8) Issuing any other certification;
- 9) Making and reporting of a search of Copyright Office records, and for any related services;
- 10) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 119 or 122; and
- 11) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.²³

In addition, section 708(a) authorizes the Register to fix fees for other services, such as the cost of preparing copies of Copyright Office records, based on the cost of providing the service.²⁴

Before proposing new fees for the services enumerated in (1) through (9), the Register must conduct a study of the Copyright Office's costs for registering claims, recording documents, and providing other services, and must consider the timing of any fee adjustments and the Copyright Office's authority to use the fees consistent with the Office's budget.²⁵ As noted, 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. . . ."²⁶ Fee adjustments "shall be fair and equitable and give due consideration to the objectives of the copyright system."²⁷

Since 1997, the Copyright Office has undertaken a series of studies to determine what fees to charge for specific services.²⁸ The Copyright Office revisits its schedule of fees approximately every three to five years, a process during which it seeks and considers public comment before submitting the proposed fee schedule to Congress.

²³ 17 U.S.C. § 708(a).

²⁴ 17 U.S.C. § 708(a).

²⁵ 17 U.S.C. § 708(b)(1). The Copyright Office does not submit other fees (including those for the filing of cable and satellite statements of account under section 708(a)(10) and (11) and additional Office services) to Congress; instead, a separate statutory provision authorizes the Copyright Office to adjust those fees pursuant to its rulemaking authority. The Office published its proposed adjustments to these fees in its 2018 Notice of Proposed Rulemaking, and will finalize those fees at the same time as the section 708(b)(1)–(9) fees addressed in this Proposal and Analysis. *See* Copyright Office Fees, 83 Fed. Reg. 24,054 (proposed May 24, 2018).

²⁴ 17 U.S.C. § 708(b)(2).

²⁷ 17 U.S.C. § 708(b)(4).

²⁸ In 1997, Congress created a new fee system allowing the Copyright 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 recodation (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.

II. Fee-Setting Objectives

When considering adjustments to its fee structure, in addition to fiscal considerations, the Copyright Office must give due consideration to the objectives of “encourage[ing] the production of original literary, artistic, and musical expression for the good of the public,” and specifically, consider the public importance of registration and recordation, the availability of legal protections for authors and other copyright owners, and the provision of materials to the Library of Congress.²⁹ Additionally, the adjusted fees must not diminish the vitality of the U.S. copyright system.³⁰ The Copyright Office therefore focuses on setting fees at a level that will allow it to recoup a reasonable portion of costs while encouraging participation in the copyright system and maintaining a robust and accurate system of copyright records.

A. Value of Copyright Registration and Recordation

Participation in the voluntary copyright registration and recordation systems is an important national objective.³¹ The public database of copyright ownership serves users of copyrighted materials as well as 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 significant benefits to the Library of Congress, which maintains an unparalleled collection of materials for the use of Congress and the American public. The Library receives books, motion pictures, sound recordings, and other items that it would otherwise have to purchase.³² The value of the materials that the Copyright

²⁹ *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 524 (1994). See also U.S. COPYRIGHT OFFICE, STRATEGIC PLAN 2019–2023, COPYRIGHT: THE ENGINE OF FREE EXPRESSION 4 (2019) (“The Office’s core services of registration, recordation, and statutory licensing are integral to marketplace transactions in the United States and abroad—providing legal certainty for licensing works to new businesses, bringing U.S. content to foreign countries, and ensuring public access to copyright ownership information.”).

³⁰ See generally *U.S. Copyright Office: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 25 (2014) (statement of Rep. John Conyers, Jr., Ranking Member, H. Comm. on the Judiciary) (“[The Copyright] Office plays a critical role in promoting and protecting the integrity and vitality of our Nation’s copyright system.”).

³¹ See generally Letter from Karyn A. Temple, Register of Copyrights & Dir., U.S. Copyright Office, to Thom Tillis, Chairman, S. Comm. on the Judiciary, Subcomm. on Intellectual Prop., and Christopher A. Coons, Ranking Member, S. Comm. on the Judiciary, Subcomm. on Intellectual Prop., Explanation of U.S. Copyright Office Registration Processes and Challenges, at 3–6 (May 31, 2019) (noting that registration, augmented by recordation, provides the public with authoritative information about millions of vetted copyright claims, promotes judicial efficiency in infringement actions, and assists the Library of Congress in growing its collections); *U.S. Copyright Office: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 27 (2014) (statement of Rep. Jerrold Nadler, Ranking Member, H. Comm. on the Judiciary) (noting what the Copyright Office must do to “so that users can continue to have confidence in participation in the copyright system”).

³² Through copyright registration and the mandatory deposit provision of the copyright law, the Copyright Office acquires published copyrighted works that the Library of Congress can select for its collections. See 17 U.S.C. §§ 407–408.

Office provides to the Library was estimated at approximately \$47.5 million in fiscal 2018.³³ The Copyright Office's registration system thus plays a pivotal role in fostering the preservation and dissemination of the country's cultural identity.

Moreover, while registration is voluntary, it is nevertheless often indispensable for authors who wish to protect their rights in the works they create. 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."³⁴ A certificate or a refusal of registration is required for a copyright owner of a U.S. work to bring an infringement lawsuit in federal court.³⁵ Additionally, registration must be made in a timely manner to enable a copyright owner to seek statutory damages, and/or attorneys' fees;³⁶ which are extremely important options in many infringement cases. Enabling authors and their designees to efficiently register their works is thus vital to judicial remedies and the value of copyright in this country.

B. Cost Efficiencies and Recovery

The Copyright Office exists in a larger copyright ecosystem where copyright transactions are a large and economically significant portion of the nation's gross domestic product.³⁷ Although the fee receipts of the Copyright Office comprise a large share of its budget, the Copyright Office has never been funded entirely by such fees. When the Copyright Office last adjusted its fees in 2014, it recovered approximately 60% of expenditures from fees for services. And in fiscal year 2016, fee receipts covered 58% of the Copyright Office's expenditures.³⁸ However, as the Copyright Office engages further with modernization initiatives, it anticipates that the portion of its expenses covered by fees may temporarily decrease. For example, the Copyright Office's fiscal 2019 appropriation provides for 51% recovery of allowable costs through fee

³³ U.S. COPYRIGHT OFFICE, FISCAL 2018 ANNUAL REPORT 14 (2019).

³⁴ 17 U.S.C. § 410(c).

³⁵ 17 U.S.C. § 411(a). In 2019, the Supreme Court confirmed that Copyright Office action on an application for registration must be complete before the owner of a U.S. work can seek redress for infringement of their rights in court. *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 892 (2019). This registration (or rejected application) requirement for bringing a lawsuit only applies to "United States works," as defined in section 101 of the Copyright Act. A purported copyright owner can still bring suit if the Copyright Office refuses registration, but the refusal must be issued before the claim is filed.

³⁶ 17 U.S.C. § 412.

³⁷ In 2017, core copyright industries added more than \$1.3 trillion to the U.S. gross domestic product, or 6.85% of the U.S. economy. STEPHEN E. SIWEK, *prepared for* INT'L INTELLECTUAL PROP. ALL., COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2018 REPORT 3 (2018), *available at* <https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf>. Core copyright industries also employed almost 5.7 million workers, who were paid an average of 39% more than the average U.S. annual wage. *Id.* According to statistics released by the Bureau of Economic Analysis, the digital economy is estimated to have accounted for 6.9% of the U.S. gross domestic product, or \$1.35 trillion, in 2017. NAT'L TELECOMMS. & INFO. ADMIN. ("NTIA"), *Digital Economy Accounted for 6.9 Percent of GDP in 2017*, NTIA BLOG (Apr. 5, 2019), <https://www.ntia.doc.gov/blog/2019/digital-economy-accounted-69-percent-gdp-2017>.

³⁸ See BOOZ ALLEN HAMILTON, 2017 FEE STUDY REPORT 2 (2017) ("BOOZ ALLEN STUDY"), *available at* https://www.copyright.gov/rulemaking/feestudy2018/fee_study_report.pdf.

offsets.³⁹ While the percentage of expenditures recovered from fees for services can and does fluctuate, the Copyright Office is always conscientious about the importance of cost recovery since it strives to provide as efficient and fiscally accountable a fee-for-service system as possible.

C. Modernization Funding

The Copyright Office has prioritized modernizing its systems to meet the rapidly expanding needs of the highly diverse copyright community and the public at large. Copyright modernization is a multi-year effort with two key components: (1) to transform all of the Copyright Office’s multiple information technology (“IT”) systems—including those that support registration, recordation, access to public records (including historical records), information services, and other public services—into a single improved and integrated IT enterprise system; and (2) to ensure that non-IT activities are efficient and aligned with the Copyright Office’s strategic goals, including by revising the workflows to improve business efficiencies, enhancing communications and collaboration, training staff, and updating regulations to streamline Office practices. The Copyright Office’s modernization plans are generally described in two documents.⁴⁰ In February 2016, the Copyright Office released its *Provisional Information Technology Modernization Plan and Cost Analysis* (“Provisional IT Plan”).⁴¹ Then, in September 2017, the Library of Congress and the Copyright Office jointly issued a *Modified U.S. Copyright Office Provisional IT Modernization Plan* (“Modified IT Plan”) describing a centralized model for updating the Copyright Office’s IT systems.⁴² In a subsequent analysis associated with the Modified IT Plan, the Library at that time assessed the costs of modernization to be approximately \$12–15 million per year for the next five years (fiscal year 2019 through fiscal year 2023).⁴³

The Copyright Office noted in the Modified IT Plan that “[p]ublic comments to the original Provisional IT Plan were generally supportive of increased fees for enhanced technological services.”⁴⁴ Stakeholders, however, “did not support Copyright IT modernization being fully fee-funded; in fact, many noted that it was premature to determine a fee/appropriated dollar ratio and endorsed the notion that taxpayer support has an important role in modernizing Office IT

³⁹ See S. REP. NO. 115-274, at 43 (2018).

⁴⁰ In addition, continual updates regarding modernization efforts are available on the Copyright Office’s website at <https://www.copyright.gov/copyright-modernization/>. The Copyright Office also hosts webinars every other month during modernization to keep the public informed about and involved in the modernization process. Past webinars are available on the Copyright Office’s website at <https://www.copyright.gov/copyright-modernization/webinar/>.

⁴¹ U.S. COPYRIGHT OFFICE, PROVISIONAL INFORMATION TECHNOLOGY MODERNIZATION PLAN AND COST ANALYSIS (Feb. 29, 2016), available at <http://www.copyright.gov/reports/itplan/technology-report.pdf>.

⁴² LIBRARY OF CONGRESS & U.S. COPYRIGHT OFFICE, MODIFIED U.S. COPYRIGHT OFFICE PROVISIONAL IT MODERNIZATION PLAN (Sept. 1, 2017) (“MODIFIED IT PLAN”), available at <http://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

⁴³ Copyright Office Fees, 83 Fed. Reg. 24,054, 24,055 (May 24, 2018).

⁴⁴ MODIFIED IT PLAN at 31.

systems.”⁴⁵ This proposed fee schedule provided a further opportunity for stakeholders to comment on the funding strategy for Copyright Office modernization following the issuance of the Modified IT Plan, and the Office has taken those comments into account in the Schedule and Analysis below.

The Copyright Office believes it is reasonable that a portion of the Office’s activities be funded by the public, and in particular, that non-fee monies should make up a significant portion of modernization funding. Modernization of the Copyright Office’s IT system is critical to all stakeholders in the copyright system: copyright owners, licensees, and the public at large. Public access to the Copyright Office’s robust compilation of copyrighted works and copyright ownership information facilitates licensed uses of copyrighted works by private parties and may be critical in actions for infringement. Licensees and other users of the public record benefit from the copyright system without paying directly for the Office’s services, and stand to benefit significantly from a modernized copyright system.

The Copyright Office is grateful that Congress has fully supported its modernization efforts and has increased both appropriations and provided authority to offset expenses with user fees to further modernization initiatives. In fiscal 2019, Congress approved funding of the Copyright Office’s modernization at the requested amount of \$12.1 million annually for five years, providing the Copyright Office flexible authority for a portion of the \$12.1 million to be offset from user fees in each year.⁴⁶

III. Procedural History and Methodology

A. Independent Analysis

The Copyright Office initiated this fee study in 2017 by contracting with an outside consultant to study the Copyright Office’s current and expected future costs.⁴⁷ This outside consultant provided an initial proposed fee schedule aimed at meeting the Copyright Office’s cost-recovery goals, as well as a fee-modeling tool that the Copyright Office could use to adjust the outside consultant’s initial proposed fee schedule to ensure the proposed fees furthered the broad policy objectives of the copyright system.⁴⁸ The Copyright Office posted the outside consultant’s study on the copyright.gov website on May 24, 2018.

In conducting the Copyright Office’s cost study, the outside consultant used an activity-based costing (“ABC”) model in line with industry best practices and recommendations from the Federal Accounting Standards Advisory Board’s (“FASAB’s”) guidelines for determining the

⁴⁵ *Id.* at 31.

⁴⁶ See S. REP. NO. 115-274, at 43 (2018).

⁴⁷ See 17 U.S.C. § 708(b)(2) (permitting fees to “account for any estimated increase in costs”); see also BOOZ ALLEN STUDY.

⁴⁸ See 17 U.S.C. § 708 (“Fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system”); BOOZ ALLEN STUDY at 7–17.

full cost of federal agency program activities⁴⁹ and the Government Finance Officers Association document regarding costing guidelines and establishing user fees.⁵⁰ The outside consultant's ABC model used three main cost drivers to create a refined cost structure: (1) overhead, representing the Copyright Office's dollars spent on indirect costs such as Office support and technology costs; (2) compensation, representing the direct costs associated with employee salary, benefits, and hours spent on certain activities; and (3) volume, representing the total number of claims, documents, and other submissions received by the Copyright Office.⁵¹

Under this approach, working with the Copyright Office, the outside consultant calculated how much each service costs the Copyright Office to provide after reviewing both the direct and indirect costs in fiscal 2016 and salary data in fiscal 2017.⁵² Section 115 filings and section 407 receipts, which lacked sufficiently reliable data to be properly considered through the activity-based model, were evaluated using an additive methodology, which assessed staff time devoted to particular tasks.

Some of the key data the outside consultant used in its study was from fiscal year 2016, although more current data was available for certain other variables, like salaries and employee estimates of time spent performing fee-related tasks. As the outside consultant's study acknowledged, however, after fiscal year 2016 the Copyright Office "engaged in a variety of regulatory reforms that are projected to increase the efficiency of various registration, recordation, or licensing activities."⁵³ Further, "[b]ecause the ABC model is necessarily based on retrospective data, Booz Allen understands that the Copyright Office may choose to make adjustments to the cost-based fee recommendations to account for predicted changes in activity efficiency."⁵⁴

As in past cost studies, to better gauge the costs of the Copyright Office's services, the outside consultant included the cost of the Office of the General Counsel's regulatory activities, which support fee services, and the Public Information Office's time spent answering registration-related questions. The outside consultant's study also 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 Policy and International Affairs, the Office of

⁴⁹ This includes FASAB's *Managerial Cost Accounting Concepts and Standards*, which promotes activity-based costing for calculating the cost of providing services. See FASAB, STATEMENT OF FEDERAL FINANCE ACCOUNTING STANDARDS 4: MANAGERIAL COST ACCOUNTING STANDARDS AND CONCEPTS (June 2017), available at http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf.

⁵⁰ See *Establishing Government Charges and Fees*, GOV'T FIN. OFFICERS ASS'N (Feb. 2014), <http://www.gfoa.org/establishing-government-charges-and-fees>.

⁵¹ BOOZ ALLEN STUDY at 7.

⁵² The Copyright Office's cost calculations concerning the services and fees reviewed in this proposal are set forth in Appendix B: Summary of Costs and Fees under 17 U.S.C. §708(b).

⁵³ BOOZ ALLEN STUDY at 5.

⁵⁴ *Id.* at 5.

Public Information and Education, the Office of the General Counsel, and the Copyright Acquisitions Division.

The outside consultant's cost assessment also included anticipated expenses associated with the Copyright Office's ongoing information technology and business process modernization efforts. The outside consultant's cost assessment included the then-current estimated full cost of the Copyright Office's modernization of \$70 million,⁵⁵ which was later updated by the Office in its 2019 congressional budget request to reflect a more refined estimate of \$61 million.⁵⁶ This estimate for Copyright Office modernization development was also used as the basis for the modernization funding request included in the Copyright Office's fiscal 2019 Congressional Budget Justification.⁵⁷ To reflect that the Copyright Office's modernization would not be fully fee-funded, the outside consultant's model amortized half of the anticipated costs of modernization over a six-year recovery term. This resulted in amortized modernization costs of approximately \$5.8 million included as a component of the cost assessment's estimated total cost of annual operations. The Office has updated these costs to \$5.1 million to match the fiscal 2019 request.

Using these cost determinations as a starting point, the study considered the other statutory fee-setting factors, including changes in costs due to inflation. The study also accounted for the price elasticity of demand for the Copyright Office's services. Price elasticity measures how demand for a service fluctuates in response to a change in price. Generally, if a small change in price is followed by a large fluctuation in demand, the service is elastic, or sensitive to price changes. An inelastic service is one that is not responsive to price changes, meaning that demand does not shift in response to large price changes. As the outside consultant noted, "[t]he vast majority of the Copyright Office's revenue, 85%, is generated from fees deemed elastic."⁵⁸ The outside consultant performed its own elasticity analysis using data on copyright registration volume, fee revenue, and fee changes from 1986 to 2018, and validated the resulting figures by referencing economic literature, econometric studies of European trademarks, and the fee setting report of the U.S. Patent and Trademark Office.⁵⁹ That analysis found an elasticity measure of -0.32 for the Copyright Office's primary services, including registration and recordation. The analysis predicts, for instance, that "raising the fee for recordation of a document from \$105 to \$125 would lead to a projected decrease of 662 documents recorded, a decline of 6%."⁶⁰

⁵⁵ See *id.* at 7, 23.

⁵⁶ See Statement of Karyn Temple, Acting Register of Copyrights, Before the Subcomm. on Legislative Branch Appropriations of the S. Comm. on Appropriations, at 3–5 (May 8, 2018), available at <https://www.copyright.gov/about/budget/2019/senate-budget-testimony-fy19.pdf>.

⁵⁷ See LIBRARY OF CONGRESS, FISCAL 2019 BUDGET JUSTIFICATION 104–05 (2018).

⁵⁸ BOOZ ALLEN STUDY at 8.

⁵⁹ *Id.* at 9–10.

⁶⁰ *Id.* at 8.

Significantly, using this validated measure of elasticity, the outside consultant concluded that the goal of full-cost recovery was “impossible to achieve.”⁶¹ The outside consultant instead calculated that the maximum obtainable cost recovery for all of the Copyright Office services was 70.4%, with annual revenue of \$47,735,256.⁶² At this level of revenue, the Copyright Office would not be able to recover its full costs even if the whole cost of IT modernization were funded through taxpayer dollars. Moreover, achieving this rate of cost recovery would be significantly detrimental to the public record and overall public interest—it would cause a 25% drop in use of Copyright Office services, including registration and recordation.⁶³

Thus, in establishing a fee schedule, the targeted cost recovery rate in the outside consultant’s study was set at 60% for all costs. This target, based on historical percentages and Booz Allen’s analysis of the Copyright Office’s fee-setting structure, is intended to optimize cost recovery without materially depleting participation in the national copyright system.⁶⁴ The outside consultant’s cost assessment included modernization costs at 50% for each fee based on volume, reflecting the Copyright Office’s conclusion, following solicitation of public comments, that copyright IT modernization should not be fully fee-funded.⁶⁵

As explained below, in reflection of the comments received in response to its 2018 Notice of Proposed Rulemaking, the Copyright Office now recommends decreasing certain proposed fee increases to lessen the impact of modernization costs on small, high-volume creators and users of the most common and elastic registration services.

B. Notices of Proposed Rulemaking

After independently evaluating and adjusting the outside consultant’s schedule,⁶⁶ the Copyright Office published a proposed fee schedule in a Notice of Proposed Rulemaking (“NPRM”) in the Federal Register on May 24, 2018. The Copyright Office sought public comment on this proposed fee schedule in part pursuant to the House Committee on Appropriations’ request that the Copyright Office report on funding strategies “based on the comments received from the

⁶¹ BOOZ ALLEN Q&A at 2–3.

⁶² *Id.* at 3.

⁶³ *Id.* at 3.

⁶⁴ BOOZ ALLEN STUDY at 2 (explaining target).

⁶⁵ *Id.* at 7.

⁶⁶ The Copyright Office focused its evaluation on fairness, equity, the objectives of the Copyright Act, the Copyright Office’s policy goals, and general guidance from the Government Accountability Office and the Office of Management and Budget’s *Circular No. A-25 Revised: User Charges*. See U.S. GOV’T ACCOUNTABILITY OFFICE, FEDERAL USER FEES: A DESIGN GUIDE (May 2008), available at <https://www.gao.gov/assets/210/203357.pdf>; OFFICE OF MGMT. & BUDGET, CIRCULAR NO. A-25 (2017), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf>. Among other things, *Circular No. A-25* provides that services with a broad-reaching benefit generally need not recover their full costs, whereas special services, that is, 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 product may be available from competing non-governmental sources, the fee should neither greatly exceed nor greatly undercut those offered in the open market.

public regarding changes in fee structures.”⁶⁷ The NPRM analyzed potential changes to fees under section 708(a)(1)–(9) to ensure that they are “fair and equitable and give due consideration to the objectives of the copyright system,” as required by the statute.⁶⁸ The Copyright Office’s proposed fees were directed at creating a fee schedule that supports the Copyright Office’s policy goal of promoting creativity and protecting creators’ rights while remaining a prudent fiduciary of public funds.⁶⁹

Overall, the Copyright Office proposed an average fee increase of 41% in the NPRM to account for inflationary increases and the expected cost of information technology modernization over the next several years, and to more fully recover the costs of registration and recordation.⁷⁰ While this was the average of proposed fee adjustments, of course, all fees were analyzed on an individual basis, and some proposed fees increased at a lower rate, stayed the same, or even decreased, applying the principles established in the Office’s methodology. Further, the Copyright 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.⁷¹ The Copyright Office also proposed to continue offering a discounted registration fee for individual authors who file online a claim for a single work that is not a work made for hire.⁷²

The NPRM proposed the following fees for basic registration claims: \$125 for paper applications (up from \$85); \$75 for electronic claims submitted on the Standard Application (up from \$55); and \$55 for electronic claims submitted on the Single Application (up from \$35).⁷³ Even with these proposed increases, the Copyright Office would still not fully recover its costs to process these applications, which are \$89 for the Standard Application and \$84 for the Single Application.⁷⁴ In the NPRM, the Copyright Office also proposed raising the fees applicable to group registrations of published and unpublished photographs to \$100, an option that allows an

⁶⁷ 163 CONG. REC. H4033 (daily ed. May 3, 2017) (explanatory statement submitted by Rep. Frelinghuysen, Chairman, H. Comm. on Appropriations), *available at* <https://www.congress.gov/congressional-record/2017/5/3/house-section/article/H3949-2>; Copyright Office Fees, 83 Fed. Reg. 24,054 (proposed May 24, 2018).

⁶⁸ Some of the fees discussed in the NPRM, including various service fees, Licensing Division fees, and Freedom of Information Act fees, are set by the Copyright Office pursuant to its authority under Section 708(a) rather than through the Section 708(b) process, and thus are not discussed in this Schedule and Analysis.

⁶⁹ *See* Copyright Office Fees, 83 Fed. Reg. at 24,056–57.

⁷⁰ *See* Copyright Office Fees, 83 Fed. Reg. at 24,056–57.

⁷¹ *See* Copyright Office Fees, 83 Fed. Reg. at 24,057.

⁷² *See* Copyright Office Fees, 83 Fed. Reg. at 24,057 (electronic Single Application option).

⁷³ *See* Copyright Office Fees, 83 Fed. Reg. at 24,057.

⁷⁴ In the 2018 NPRM these costs were \$90 and \$86, respectively. The changes resulted from the revised, lower estimated cost of modernization compared to the estimates used in the fee model at the time of the NPRM. All subsequent estimated costs of service in this Schedule and Analysis represent the revised, lower estimated cost of modernization.

applicant to gain individual copyright registration protection for up to 750 photographs for one price.⁷⁵

The NPRM also proposed somewhat higher fees for group registration of newspapers and group registration of newsletters, from \$80 to \$95 for electronic filings and \$125 for paper filings. Additionally, the NPRM proposed increasing the fee for group registration of unpublished works from \$55 to \$85, in recognition that their examination time closely resembles that of contributions to periodicals, which were proposed to stay at \$85.⁷⁶ Concerning group registration of updates and revisions to databases, the Copyright Office proposed increasing fees from \$55 (for electronic filings) and from \$65 and \$85 (for paper filings) to \$250 and \$500 for photographic and non-photographic databases, respectively.⁷⁷ These claims are costly to process, in part, because applicants may include up to three months' worth of content in each submission, there is no limit on the number of individual works that may be included in each update, and the Office must examine each update to determine if the selection, coordination, and arrangement of the content is sufficiently creative. In the case of non-photographic databases, the claim must be submitted with a paper application and a physical deposit, which further increases the amount of time needed to handle each claim.⁷⁸

The Office also proposed new fees for recordation services. It proposed raising the basic recordation fee for paper filings from \$105 to \$125, and the fee for each additional ten titles recorded from \$35 to \$60.⁷⁹ The Copyright Office suggested these increases because, on the whole, it has not approached cost recovery for processing recordation submissions in recent years.⁸⁰ The Copyright Office further recommended a new, lower fee for electronic submissions to record documents, in anticipation of the development of a new electronic recordation system at some point during the period that the new fee schedule is in place. The fee for such submissions is set at \$95. The Copyright Office also proposed reducing the fee for additional transfers from \$105 to \$95.

On June 21, 2019, the Copyright Office issued a supplemental NPRM ("June 2019 NPRM") proposing limited revisions to the NPRM relating to document recordation and new prospective group registration options.⁸¹ To better distribute costs among remitters based on the size of a recordation filing, the June 2019 NPRM proposed adjusting document recordation fees by

⁷⁵ See Copyright Office Fees, 83 Fed. Reg. at 24,057–58.

⁷⁶ Copyright Office Fees, 83 Fed. Reg. at 24,059. Since the NPRM, the Copyright Office has adopted new group registration option for unpublished works. Previously, the Office had registered an "unpublished collection" of works submitted on the Standard Application as an accommodation. See Group Registration of Unpublished Works, 84 Fed. Reg. 3693 (Feb. 13, 2019).

⁷⁷ Copyright Office Fees, 83 Fed. Reg. at 24,058.

⁷⁸ The current estimated cost of service for group registration of updates and revisions to a non-photographic database is \$693.

⁷⁹ Copyright Office Fees, 83 Fed. Reg. at 24,061.

⁸⁰ Copyright Office Fees, 83 Fed. Reg. at 24,061.

⁸¹ Copyright Office Fees, 84 Fed. Reg. 29,135 (proposed Jun. 21, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-06-21/pdf/2019-12976.pdf>.

changing from a formula based solely on the number of recorded titles to a formula based on the number of works and alternate titles and registration numbers to which a document pertains.⁸² For its newly proposed group registration options for short online literary works and for works contained on an album of music, the June 2019 NPRM also announced the Copyright Office's intention to issue filing fees equal to the fee that the Copyright Office proposed for other claims submitted on the Standard Application.⁸³

The Copyright Office received a variety of comments from a wide range of interested parties in response to the two NPRMs.⁸⁴ While the majority of commenters expressed general concerns about the proposed fee increases to basic registrations,⁸⁵ several groups of commenters specifically challenged the Copyright Office's proposal to increase certain fees to partially fund IT modernization.⁸⁶ Other commenters to the June 2019 NPRM objected to the proposed increases for certain group registration options.⁸⁷

A number of the comments argued that copyright modernization should be paid from increased appropriated dollars to the Copyright Office and the Library of Congress, and not from increased

⁸² Copyright Office Fees, 84 Fed. Reg. at 29,136–37.

⁸³ Copyright Office Fees, 84 Fed. Reg. at 29,137–38.

⁸⁴ The comments can be viewed through the Copyright Office website at <https://www.copyright.gov/rulemaking/feestudy2018/>.

⁸⁵ See, e.g., Barbara Svatek, Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 1 (July 21, 2018) ("Raising the fees would create a hardship on citizens, and discriminate against lower income bracket persons. It also discriminates against citizens with disabilities, like me."); A2IM, Comments at 1 ("Any further increase in user fees, will negatively affect the small and medium sized enterprises that A2IM represents . . ."); Graphic Artists Guild ("GAG"), American Photographic Artists ("APA"), and American Society for Collective Rights Licensing ("ASCRL"), Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 1 (Sept. 21, 2018) ("Raising Registration Fees as Wages Remain Stagnant Will Deter Registrations.").

⁸⁶ See A2IM Comments at 5–6 ("The calculation of costs associated with each service should exclude the Copyright Office's share of the Library's IT Modernization Plan."); Association of American Publishers ("AAP"), Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 2–13 (Sept. 18, 2018) ("AAP Comments") ("The Copyright Office should especially reconsider its determinations regarding . . . the use of fees to fund the Modified IT Plan insofar as certain aspects will primarily benefit services and activities of the Library of Congress that are virtually unrelated to implementing the Copyright Act."); Coalition of Visual Artists ("CVA"), Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 7–9 (Sept. 21, 2018) ("CVA Comments") (arguing that modernization should be funded through yearly appropriations, not user fees); National Music Publishers' Association ("NMPA"), Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 4–5 (Sept. 21, 2018) ("NMPA Comments") ("[C]reators should not bear the burden of increased fees to modernize the [Copyright] Office's IT system as the Office proposes.").

⁸⁷ Regina Williams, Comments Submitted in Response to U.S. Copyright Office's June 21, 2019, Supplemental Notice of Proposed Rulemaking at 1 (July 22, 2019) (asserting that "10 works per submission at \$55 per group rate for 50 poems[], is outlandish"); NMPA, Comments Submitted in Response to U.S. Copyright Office's June 21, 2019, Supplemental Notice of Proposed Rulemaking at 1–3 (July 22, 2019) ("NMPA Supplemental Comments") ("While we appreciate the Office's steps to mitigate this problem by creating a group registration option for musical works on an album, the benefit of the [group registration of works on an album of music ("GRAM")] option will be reduced if the Standard Application fees and GRAM registration fees are raised to \$75.").

fees.⁸⁸ In these objections, three themes emerged. First, commenters argued that modernization costs, as a “one-time capital investment,” are “not appropriate to pass . . . onto the Office’s ‘customers.’”⁸⁹ A2IM noted that “the inclusion of non-recurring costs in the Booz Allen analysis has the effect of artificially inflating the fee estimates that underlie the current proposal.”⁹⁰ Second, commenters contended that “[m]ore [a]ppropriated [d]ollars [a]re in [o]rder to [f]und the Copyright Office’s IT [m]odernization.”⁹¹ AAP explained, “[since] the Library of Congress has effectively taken control over the Copyright Office’s IT Modernization under the Modified Plan, AAP advocates more firmly for a higher contribution from the Library of Congress’ appropriated dollars,” and not higher fees.⁹² Similarly, the Coalition of Visual Artists argued, “Congress and the American taxpayers should provide the appropriations needed to fund modernization rather than place that burden on the backs of small creators who are already struggling under the cost and complexity of the existing copyright system.”⁹³ Third, commenters noted that “[s]ince IT modernization will increase efficiency and decrease long-term costs, any cost study associated with the fee increase should take into account the improved efficiencies and cost savings expected with a future IT modernization.”⁹⁴ These comments also specified the potential harm in raising group registration rates for published and unpublished photographs, contending that an 82% increase “disproportionately burdens small photographers.”⁹⁵

Finally, the Copyright Office received several comments objecting to proposed changes to fees for other services that are not referenced in section 708(a)(1)–(9), and therefore not addressed in this Schedule and Analysis. Specifically, the 2018 NPRM proposed raising the fee for expedited processing of qualified claims from \$800 to \$1,000. Commenters questioned the proposed increase and requested relief from the new fee in cases of imminent litigation.⁹⁶ The Copyright Office carefully considered these comments, and it intends to retain the current fee for expedited

⁸⁸ A2IM, American Intellectual Property Law Association (“AIPLA”), AAP, CVA, the Copyright Alliance, GAG, APA & ASCRL, NMPA, Professional Photographers of America (“PPA”), the Recording Industry Association of America, and law firm Shaftel & Schmelzer objected to the inclusion of modernization costs in the Copyright Office’s calculation of costs associated with copyright services.

⁸⁹ A2IM Comments at 5.

⁹⁰ A2IM Comments at 6.

⁹¹ AAP Comments at 6.

⁹² AAP Comments at 7.

⁹³ CVA Comments at 8.

⁹⁴ Copyright Alliance, Comments Submitted in Response to U.S. Copyright Office’s May 24, 2018, Notice of Proposed Rulemaking at 13 (Sept. 21, 2018) (“Copyright Alliance Comments”).

⁹⁵ PPA, Comments Submitted in Response to U.S. Copyright Office’s May 24, 2018, Notice of Proposed Rulemaking at 3–4 (Sept. 21, 2018) (“PPA Comments”).

⁹⁶ See AIPLA, Comments Submitted in Response to U.S. Copyright Office’s May 24, 2018, Notice of Proposed Rulemaking at 6–7 (Sept. 19, 2018) (noting in response to a proposed fee increase that “[g]iven the amount of time normal processing can take . . . and the looming question before the Supreme Court in *Fourth Estate Public Benefit Corp. v. Wall-Street.com* . . . regarding whether a decision by the [Copyright] Office on a registration application is required before filing suit, this proposed increase seems unnecessary or perhaps should be tabled by the Office pending the Supreme Court’s decision.”); NMPA Comments at 15 (“The increase in special handling fees in particular will increasingly make copyright enforcement a privilege rather than a right.”).

processing at \$800. The Copyright Office's analysis of this issue will be reflected in the Office's final rule, rather than this Schedule and Analysis.

IV. Further Methodology and Adjustments to Proposed Fees

The Copyright Office has carefully reviewed every comment received in response to its two NPRMs, and, after analyzing these comments in light of the Office's duty to establish fees that are fair, equitable, and serve the objectives of the overall copyright system, has reconsidered its proposed fee schedule. Based on the comments, the Office also further considered the projected effect the proposed fee increases might have on use of the Office's services. As indicated in the outside consultant's study, demand for a majority of the Copyright Office's services is price elastic, and experiences a reduction in demand whenever fees are increased. While external factors, such as the overall national economic health, also influence filing volume, there is a demonstrated inverse relationship between an increase in fees and the number of claims filed. In other words, as fees increase, the number of applications decreases, at least initially.

When considering these issues of price elasticity, it is instructive to compare Copyright Office fees to those of its closest sister agency, the U.S. Patent and Trademark Office ("USPTO"). Copyright Office fees are modest in relation to fees charged by USPTO because Copyright Office fees must take into account the voluntary nature of registration and recordation. In contrast, USPTO fees can be higher in reflection of the mandatory patent and trademark registration regimes.

Registration filing and document recordation are two heavily used services, together generating well over 90% of the Copyright Office's fee receipts. These two categories of fees are quite vulnerable to a decline in demand in response to increased fees. For example, in the months following a fee increase in 2007, registration filings dropped by 8.9 %, and then increased by 3.7% the following year.⁹⁷ Therefore, the Copyright Office expects a 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 Copyright 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.

The elastic nature of Copyright Office fees also affects how its fees should be set to fund modernization activities. In light of the unique, comprehensive modernization effort and the significant concern over modernization costs raised by public comments, the Copyright Office is adjusting its proposed increases. As a general matter, of course, it is permissible for user fees to fund capital expenditures and ongoing system maintenance. However, the Copyright Office has taken note of the comments received by some stakeholders regarding the effect of concurrently supporting both an existing and a future IT system partially through fees.⁹⁸ Therefore, the

⁹⁷ Percentages are based on Copyright Office data from FY 2006, FY 2007, and FY 2008.

⁹⁸ See generally CVA Comments at 8 ("Congress and the American taxpayers should provide the appropriations needed to fund modernization rather than place that burden on the backs of small creators who are already struggling under the cost and complexity of the existing copyright system.")

Copyright Office has made the determination to decrease proposed fee increases for certain in-demand services to lessen the impact on small, high-volume creators and encourage participation in other common or highly elastic registration services. These decreases from the fees proposed in the 2018 NPRM for the Single Application and electronic Standard Application, as well as the group photograph and contributions to periodicals applications, effectively offset the impact of modernization costs for these fees. While all fees can be used for Copyright Office expenses, which include modernization, the Copyright Office has reduced its targeted cost recovery in these cases to lessen the burden of modernization costs.

The Copyright Office also noted the impact of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”). The MMA makes significant changes to the section 115 compulsory license, and in accordance with MMA, the Copyright Office no longer accepts section 115 notices of intention to obtain a compulsory license for making a digital phonorecord delivery of a musical work. In fiscal 2019, that change is projected to reduce amounts available for operations by \$4.3 million. The MMA also directs the Copyright Office to engage in a number of new regulatory, administrative, and educational outreach tasks to implement this historic change to the copyright laws.

The Copyright Office did not attempt to recoup any loss due to MMA through fees because doing so would increase fees beyond those proposed in the 2018 NPRM, potentially significantly reducing the number of filings, and thus undermining the copyright system overall. The Copyright Office will request increased appropriations to cover the shortfall amount.

Still, the Copyright Office must ensure that fee receipts are sufficient to anticipate 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. While much of the anticipated costs associated with modernization will be covered through taxpayer-funded appropriations, the remainder is expected to be funded by fees collected in current and prior years, varying by fee. Accordingly, the Copyright Office has taken care to consider stakeholder comments as well as the foregoing factors in developing its proposed fee schedule.

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.⁹⁹

	Registration, Recordation, and Related Services Referenced in 708(a)(1)-(9)	Current Fee	Proposed New Fee	Percent Change
(1)	Registration of a claim in an original work of authorship:			
	Electronic Filing:			
	(i) Single author, same claimant, one work, not for hire	\$35	\$45	+29%
	(ii) All other filings	\$55	\$65	+18%
	Paper Filing (Forms PA, SR, TX, VA, SE)	\$85	\$125	+47%
	Registration of a claim in a group of contributions to periodicals (electronic filing only)	\$85	\$85	0%
	Registration of a claim in a group of published photographs or a claim in a group of unpublished photographs (electronic filing only)	\$55	\$55	0%
	Registration of updates and revisions to a database that predominantly consists of photographs:			
	Electronic filing	\$55	\$250	+355%
	Paper filing	\$65	\$250	+285%
	Registration of updates and revisions to a database that predominantly consists of non-photographic works (paper filing only)	\$85	\$500	+488%
	Registration of a claim in a group of serials (per issue, minimum 2 issues):			
	Electronic Filing	\$25	\$35	+40%
	Paper Filing (Form SE/Group) ¹⁰⁰	\$25	\$70	+180%
	Registration of a claim in a group of newspapers or a group of newsletters (electronic filing only)	\$80	\$95	+19%
	Registration of a claim in a group of unpublished works (electronic filing only)	\$55	\$85	+55%
	Registration of a group of works on an album (electronic filing only) ¹⁰¹	\$55 (NPRM)	\$65	+18%

⁹⁹ See Appendix B: Summary of Costs and Fees for additional data concerning the Copyright Office's costs in connection with these services.

¹⁰⁰ 37 C.F.R. § 202.4(d)(2) ("The applicant may complete and submit the online application designated for a group of serial issues. Alternatively, the applicant may complete and submit a paper application using Form SE/Group, provided that the application is received on or before December 30, 2019.").

	Registration, Recordation, and Related Services Referenced in 708(a)(1)-(9)	Current Fee	Proposed New Fee	Percent Change
	Registration of a group of short online literary works (electronic filing only) ¹⁰²	\$55 (NPRM)	\$65	+18%
	Registration of a claim in a restored copyright (Form GATT) (paper filing only)	\$85	\$100	+18%
	Registration of a correction or amplification to a claim:			
	Electronic Filing	\$130	\$100	-23%
	Paper Filing for correction or amplification of renewal registrations, GATT registrations, and group registrations for non-photographic databases (Form CA)	\$130	\$150	+15%
(2)	Registration of a renewal claim (Form RE):			
	(i) Claim without addendum	\$100	\$125	+25%
	(ii) Addendum (in addition to the fee for the claim)	\$100	\$100	0%
(3)	Issuance of receipt for § 407 deposit	\$30	\$30	0%
(4), (6)	Recordation of a document, including a notice of termination and a notice of intention to enforce a restored copyright: ¹⁰³			
	(i) Base fee (includes 1 work identified by 1 title and/or registration number):			
	Paper	\$105	\$125	+19%
	Electronic	N/A	\$95	NA
	(ii) Additional transfer (per transfer) (for documents recorded under 17 U.S.C. 205)	\$105	\$95	-10%
	(iii) Additional works and alternate identifiers:			
	Paper (per group of 10 or fewer additional works and alternate identifiers)	\$35	\$60	+71%
	Electronic:			
	1 to 50 additional works and alternate identifiers	\$60	\$60	0%
	51 to 500 additional works and alternate identifiers	\$225	\$225	0%

¹⁰¹ Group Registration of Works on an Album of Music, 84 Fed. Reg. 22,762 (proposed May 20, 2019); Copyright Office Fees, 84 Fed. Reg. 29,135 (proposed June 21, 2019).

¹⁰² Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612 (proposed Dec. 21, 2018); Copyright Office Fees, 84 Fed. Reg. 29,135.

¹⁰³ In June 2019, the Copyright Office issued a supplemental notice proposing limited revisions to the 2018 NPRM relating to document recordation and new prospective group registration options. *See* Copyright Office Fees, 84 Fed. Reg. 29,135.

	Registration, Recordation, and Related Services Referenced in 708(a)(1)-(9)	Current Fee	Proposed New Fee	Percent Change
	501 to 1,000 additional works and alternate identifiers	\$390	\$390	0%
	1,001 to 10,000 additional works and alternate identifiers	\$555	\$555	0%
	10,001 or more additional works and alternate identifiers	\$5,550	\$5,550	0%
	(iv) Correction of online Public Catalog data due to erroneous electronic title submission (per work or alternate identifier)	\$7	\$7	0%
(5)	Recordation of a notice of intention to make and distribute phonorecords (17 U.S.C. § 115)	\$75	\$75	0%
	(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)	\$10	\$10	0%
(7)	Provision of an additional certificate of registration	\$40	\$55	+38%
(8)	Certification of other Copyright Office records, including search reports (per hour)	\$200	\$200	0%
(9)	Search report prepared from official records other than Licensing Records (per hour, two-hour minimum)	\$200	\$200	0%
	Estimate of search fee (credited to search fee)	\$200	\$200	0%
	Search report prepared from Licensing Records (per hour, one hour minimum)	\$200	\$200	0%

B. Analysis

Based on its study, the Copyright Office has determined that some fees should increase, some should decrease, and some should remain the same. From past experience, any increase in fees will result in fewer claims, at least temporarily in the months immediately following implementation. The Copyright Office also anticipates that, at the fee levels proposed, revenues generated by higher fees will not be enough to offset the unanticipated decrease in revenues generated by the MMA. The Copyright Office estimates that revenues generated by these proposed fees and the other fees under its basic budget will be roughly \$36.5 million; approximately \$2.7 million below the Office's fiscal 2019 authority to offset costs from current year fee collections.

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

1. Registration Fees

While voluntary, registration offers substantial benefits to the registrant and to the public. For this reason, fees must be affordable so that individual creators are not discouraged from registering their works.

In reviewing its registration fees, the Copyright Office sought to address two issues in particular. First, for the reasons noted above, the Copyright Office has reduced the amount of amortized IT modernization costs included in the cost assessment to reflect the Copyright Office's position that modernization costs should not be recovered solely through user fees. This reduction offsets the impact of modernization costs for the Standard Application, Single Application, group photographs, and group contributions to periodicals fees.

Second, the Copyright Office noted the particular challenges faced by photographers, who expressed significant concern about the impact of fees on their ability to protect their works. Photographers typically produce a large number of works¹⁰⁴ and must register in order to receive the full range of judicial remedies for infringement.¹⁰⁵ Photographers have also cited difficulties in the registration process, noting that “[e]xisting registration procedures are not optimized for visual imagery” and “work[] better for small volume, large profit producers than for those who create dozens if not hundreds of works over a short period.”¹⁰⁶ However, recent changes to the regulations and upgrades to the electronic registration system have improved efficiency of claims for group registration of photographs. Under the current rule, each claim may include no more than 750 photos. Applicants are required to upload their photos in a digital format, and use an electronic application form that is specifically designed for group photo claims. Furthermore, they are required to submit a separate spreadsheet that identifies the titles, file names, and publication dates (if any) for each photo. The Copyright Office believes that these improvements have obviated the necessity of raising the fee for groups of photographs. Accordingly, the Copyright Office proposes that this fee remain at its current level.¹⁰⁷

a. Claims Submitted on the Standard Application or with a Paper Application

The Copyright Office plans to adopt the following adjustments to the following registration fees:

¹⁰⁴ U.S. COPYRIGHT OFFICE, COPYRIGHT AND VISUAL WORKS: THE LEGAL LANDSCAPE OF OPPORTUNITIES AND CHALLENGES 3 (2019) (“VISUAL WORKS”), available at <https://www.copyright.gov/policy/visualworks/senate-letter.pdf> (noting that “photographers might take over one thousand photographs in a single session”).

¹⁰⁵ *Id.* at 15–24.

¹⁰⁶ *Id.* at 3–4 (quoting comments submitted by the Copyright Alliance and the Kernochan Center for Law, Media and the Arts, Columbia University School of Law).

¹⁰⁷ The Copyright Office is making targeted efforts to address visual artists' concerns. For example, the Copyright Office issued a Notice of Inquiry asking for public input on a wide variety of issues relating to modernizing registration, including how to improve the application process and using APIs to open up the possibility of bulk registration submission. See Registration Modernization, 83 Fed. Reg. 52,336 (Oct. 17, 2018).

- Fee for applications filed on paper to increase from \$85 to \$125
- Fee for applications filed electronically to increase from \$55 to \$65

These applications may be used to register any work that is eligible for registration under sections 408(a) and 409 of the Copyright Act, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation. The Copyright Office offers applicants two options for registering these types of works: (1) electronic filing through the Copyright Office's eCO system using the Standard Application; and (2) paper filing using a hard copy application. Currently, the vast majority of applicants use the online filing option; the Copyright Office receives approximately 96% of copyright claims through eCO. Electronic filings cost the Copyright Office less to process than paper applications. Additionally, online applications are attractive because, on average, the Copyright Office requires approximately three months to complete most claims that are filed electronically versus six months to complete most claims filed on paper applications.¹⁰⁸

In reviewing its registration fees, the Copyright 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 Copyright Office recovered only 51% of its costs in processing online claims and 72% of its costs in processing paper applications during fiscal 2016. These figures support the Copyright Office's proposal to increase fees for both options to recover a larger percentage of its costs. It is estimated that by implementing the proposed fees the Copyright Office would recover 69% of the costs of processing electronic claims submitted on the Standard Application and 91% of the costs of processing paper applications.¹⁰⁹

As noted in the prior fee study,¹¹⁰ the substantially higher costs of processing paper applications as compared to the more efficient electronic process justifies a higher fee for paper applications, and the Copyright Office is trying to "incentivize electronic filings."¹¹¹ Accordingly, the Copyright Office continues to propose different filing fees for these applications. The Copyright Office proposes increasing the existing \$85 fee for paper applications to \$125. This proposal will achieve a greater cost recovery for the inefficiencies of paper filings and incentivize use of the electronic system.

¹⁰⁸ U.S. COPYRIGHT OFFICE, *Registration Processing Times*, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf>. Processing times are based on claims that do not require correspondence.

¹⁰⁹ See Appendix B: Summary of Costs and Fees.

¹¹⁰ See U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT ON OR ABOUT APRIL 1, 2014, at 16 (2013) ("2014 FEE STUDY"), available at <https://www.copyright.gov/docs/newfees/USCOFeeStudy-Nov13.pdf>.

¹¹¹ 2014 FEE STUDY at 16. See, e.g., Group Registration of Newspapers, 83 Fed. Reg. 4144, 4145 (Jan. 30, 2018) (requiring applicants to file an online application rather than a paper application to register a group of newspapers); Group Registration of Photographs, 83 Fed. Reg. 2542, 2543 (Jan. 18, 2018) (requiring applicants to file an online application rather than a paper application to register a group of published photographs).

For electronic claims submitted on the Standard Application, the Copyright Office proposes to raise the current fee from \$55 to \$65 (a \$10 increase). The Copyright Office originally proposed a \$65 fee for electronic claims in 2012 after conducting an analysis of the Copyright Office's costs.¹¹² Specifically, the Copyright Office proposed an increase from \$35 to \$65 (+86%) in 2012, but ultimately decided on a fee of \$55 (+57%) when the increase went into effect in 2014.¹¹³ Here, the Copyright Office is only proposing an 18% fee increase. The proposed \$65 fee is less than the \$75 fee that was proposed in the 2018 NPRM, thus responding to public comments concerned with the amount of the increase for electronic filing.¹¹⁴

b. Claims Submitted on the Single Application

The Copyright Office plans to adopt the following adjustment for the following registration fee:

- Fee for claims submitted on the Single Application to increase from \$35 to \$45

The Single Application is designed for those authors who file the simplest kind of claim. The purpose of the Single Application is to encourage more individual creators to register their works and to foster the development of a more robust public record. Specifically, the Single Application may be used to register a single work by a single author that is owned by the person who created it. This is part of the Copyright Office's commitment to maintaining an affordable copyright registration system. 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. However, the Copyright Office believes that a small increase to the fee for the Single Application is warranted to recover at least 49% of the costs associated with processing these claims, in consideration of the Copyright Office's operational budget. The Copyright Office therefore proposes that the fee for individual authors who use the Single Application to register a single work should increase from \$35 to \$45.

In proposing to adjust this registration fee, the Copyright Office took into account a large number of public comments advocating for the Copyright Office to seek non-fee related methods to fund modernization and to reduce fees for small creators. In the 2018 NPRM, the Copyright Office proposed increasing this fee from \$35 to \$55, which would have achieved a 52% cost recovery. Commenters noted, however, that such an increase “would be yet another financial burden upon writers and artists looking to become small businesses.”¹¹⁵ Further, commenters argued that modernization costs should be accounted for via other means, rather than placed “on the backs of

¹¹² Copyright Office Fees, 77 Fed. Reg. 18,742, 18,746 (Mar. 28, 2012).

¹¹³ 2014 FEE STUDY at 15–16.

¹¹⁴ See, e.g., NMPA Comments at 1 (“The proposed increase in fees is likely to cause a result that is inconsistent with the fundamental principles of copyright law.”).

¹¹⁵ Danielle Williams, Comments Submitted in Response to U.S. Copyright Office's May 24, 2018, Notice of Proposed Rulemaking at 1 (June 6, 2018).

small creators who are already struggling under the cost and complexity of the existing copyright system.”¹¹⁶

The Copyright Office understands that works of independent creators fuel the nation’s economy while at the same time, these individual creators and small business owners may be most sensitive to price increases in the registration system.¹¹⁷ As such, the Copyright Office proposes to raise the registration fee for the Single Application from \$35 to \$45, \$10 less than the Copyright Office proposed in the NPRM. The reduction in the Copyright Office’s proposed fee from \$55 to \$45 also reflects the cost efficiencies achieved through technical upgrades to the Single Application which were released in December 2017¹¹⁸ and the promulgation of new regulations related to the Single Application which went into effect in January 2019.¹¹⁹

c. Group Registration Fees

The Copyright Office plans to adopt the following adjustments with respect to group registration fees:

- Fee for registration of a claim in a group of contributions to periodicals to remain at \$85
- Fee for registration of a claim in a group of published photographs or a group of unpublished photographs (electronic filing only) to remain at \$55
- Fees for registration of updates or revisions to a database that predominantly consists of photographs to increase from \$55 (electronic) and \$65 (paper) to \$250 (electronic or paper filing)
- Fee for registration of updates or revisions to a database that predominantly consists of non-photographic works to increase from \$85 to \$500 (paper filing only)
- Fee for registration of a claim in a group of serials (per issue, minimum of two issues) to increase from \$25 to \$35 (electronic filing only)
- Fee for registration of a claim in a group of serials (Form SE/Group) (per issue, minimum of two issues) to increase from \$25 to \$70

¹¹⁶ CVA Comments at 8.

¹¹⁷ See Brandon Vogts, Comments Submitted in Response to U.S. Copyright Office’s May 24, 2018, Notice of Proposed Rulemaking at 1 (Jul. 3, 2018) (“This aggressive proposed increase in the fee structure pertaining to copyright registrations is particularly problematic for both hobbyists/enthusiasts and independent creatives.”).

¹¹⁸ See Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 5227, 5228 (proposed Feb. 6, 2018).

¹¹⁹ See Streamlining the Single Application and Clarifying Eligibility Requirements, 83 Fed. Reg. 66,627 (Dec. 27, 2018).

- Fee for registration of a claim in a group of newspapers or a group of newsletters (electronic filing only) to increase from \$80 to \$95
- Fee for registration of a claim in a group of unpublished works to increase from \$55 to \$85

Congress gave the Register discretion to allow registration of groups of related works with one application and filing fee.¹²⁰ Pursuant to this authority, the Register promulgated regulations permitting the Copyright Office to issue group registrations for certain limited categories of works, provided certain conditions have been met.¹²¹ When creating these options, the Copyright Office must balance the copyright owners' desire for more liberal registration options, the need for an accurate public record, and the need for an efficient method of facilitating the examination of each work. While group registration options encourage registration, especially for large-volume creators, these options typically increase the density of the examination process.¹²² In particular, it can be more difficult to adequately capture information about each work, particularly within the technological constraints of the current electronic registration system. This creates a more time-consuming examination process, as information relating to each work in a group registration claim still needs to be evaluated individually. Additionally, group registration options necessarily have eligibility restrictions that may lead to increased correspondence if applicants fail to heed to expressed requirements. Thus, group registration options cost the Copyright Office more to process than claims involving one work of authorship.

The Copyright Office is no longer, however, proposing an adjustment to fees for registration of group claims for contributions to periodicals or photographs. First, there have been improvements in operational efficiency regarding registration of group photograph applications, which reduces the cost to the Copyright Office of providing this service. Additionally, comments received in response to the Copyright Office's initial group photographs 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.¹²³ The comments also indicated a significant concern that the proposed fee increase would unduly depress participation in the system,¹²⁴ because photographers already face unique pressures in enforcing their rights once they obtain a copyright registration.¹²⁵ In light of these conditions, the Copyright Office

¹²⁰ See 17 U.S.C. § 408(c)(1).

¹²¹ See generally 37 C.F.R. §§ 202.3(b)(5), 202.4.

¹²² See Registration of Claims to Copyright: Group Registration of Serials, 55 Fed. Reg. 50,556, 50,556 (Dec. 7, 1990) (explaining that the Copyright Office had previously declined to establish a group option "due to concerns about the administrative burden associated with processing several works on a single application" and "[b]ased on the Office's experience with statutory group registration of contributions to periodicals, the Office [found] that, unless appropriate restrictions limit the availability of group registration, the administrative costs and burden on the Office escalate").

¹²³ See, e.g., CVA Comments at 16–17; PPA Comments at 3–4, 8–12.

¹²⁴ See CVA Comments at 17; PPA Comments at 11.

¹²⁵ See VISUAL WORKS at 15-24.

continues to study how best to facilitate photographers' registration of their works.¹²⁶ Thus, while the Copyright Office may adjust the fee structure for registration of groups of photographs in the future, it is not currently proposing a change in fee.

For the remaining categories of group options, however, the Copyright Office recommends fee increases to maintain adequate resources for the Copyright Office's administration of these options in light of the disproportionate time it takes to process these applications. The fee to register a claim in updates and revisions to a database that predominantly consists of photographs is proposed to increase from \$55 (electronic) and \$65 (paper) to \$250 (electronic or paper). Similarly, the fee to register a claim in updates and revisions to a database that predominantly consists of non-photographic works is proposed to increase from \$85 to \$500. Because there is no limit on the number of works that may be included in each submission, these applications are very costly to process. For instance, the Copyright Office calculates that processing an application for group registration of updates and revisions to a non-photographic database costs \$693.¹²⁷ Accordingly, the Copyright Office proposes increasing the fees for both services to achieve better cost recovery.

In the case of serials, newspapers, and newsletters, the Copyright Office also recommends adjustments. To encourage use of the electronic system, the fee to register a claim in a group of serials using Form SE/Group is proposed to increase from \$25 to \$70.¹²⁸ And the fee to register a claim in a group of serials using the electronic system is proposed to increase from \$25 to \$35 to recover more of the costs of providing this service without greatly decreasing demand. Likewise, the fee to register a claim in a group of newspapers or a group of newsletters is proposed to increase from \$80 to \$95.

Additionally, the Copyright Office recommends an adjustment to the recently promulgated fee to register a claim in a group of unpublished works, proposing an increase from \$55 to \$85. In the final rule establishing this new group option, the Copyright Office adopted a \$55 fee, noting that the new option replaced a previously available option for registering an "unpublished collection" on the Standard Application.¹²⁹ Unlike other group options, registering a claim in a group of unpublished works does not use the Standard Application, and, as explained in the final rule establishing this option, examination of up to ten claims necessarily requires more processing time than a single claim.¹³⁰ Accordingly, the Copyright Office recommends increasing the fee to \$85, for the reasons explained in the NPRM.

¹²⁶ See *id.*; Registration Modernization, 83 Fed. Reg. 52,336 (Oct. 17, 2018).

¹²⁷ Copyright Office Fees, 83 Fed. Reg. 24,054, 24,058–59 (proposed May 24, 2018).

¹²⁸ 37 C.F.R. § 202.4(d)(2) ("The applicant may complete and submit the online application designated for a group of serial issues. Alternatively, the applicant may complete and submit a paper application using Form SE/Group, provided that the application is received on or before December 30, 2019.").

¹²⁹ See Group Registration of Unpublished Works, 84 Fed. Reg. 3693, 3696 (Feb. 13, 2019).

¹³⁰ See Group Registration of Unpublished Works, 84 Fed. Reg. at 3694–95.

Finally, the Copyright Office recommends newly proposed fees for registering claims in a group of short online literary works¹³¹ and a group of works on an album of music.¹³² In the notices introducing these options, the Copyright Office noted that these claims must be submitted on the Standard Application, and in recognition of this anticipated workflow, the Copyright Office proposed a \$55 fee to match the fee that applies to any claim submitted on that form.¹³³ Because the Copyright Office recommends increasing the fee for the Standard Application from \$55 to \$65, and because the Copyright Office expects to implement these new group registration options before it completes its IT modernization efforts, the Copyright Office recommends the same fee for these soon to be established options in light of the constraints in the Copyright Office's current eCO registration system. The Copyright Office makes this proposal in consideration of the recent comments to the June 2019 NPRM.¹³⁴

d. Other Registration Fees

The Copyright Office plans to adopt the following adjustments to certain other registration fees:

- Fee for registration of a claim in a restored copyright (Form GATT) to increase from \$85 to \$100
- Fee for registration of a correction or amplification to a renewal registration, GATT registration, or group registration for non-photographic databases (Form CA) to increase from \$130 to \$150
- Fee for registration of a correction or amplification to a claim (electronic filing) to decrease from \$130 to \$100

After reviewing its costs, the Copyright 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).¹³⁵ In addition, the current fee for filing a supplementary registration of a correction or amplification to a claim involving a non-photographic database, a renewal registration, or a GATT registration (Form CA), another paper-based process, was insufficient.¹³⁶ Paper-based processes are considerably less efficient than electronic registration. Specifically regarding Form GATT, the issues involved can be difficult and complex, requiring the work of higher-paid senior staff as well as multiple rounds of correspondence. Regarding Form CA, the subject matter of the correction or amplification

¹³¹ Group Registration of Short Online Literary Works, 83 Fed. Reg. 65,612 (proposed Dec. 21, 2018).

¹³² Group Registration of Works on an Album of Music, 84 Fed. Reg. 22,762 (proposed May 20, 2019).

¹³³ Group Registration of Short Online Literary Works, 83 Fed. Reg. at 65,616; Group Registration of Works on an Album of Music, 84 Fed. Reg. at 22,766.

¹³⁴ NMPA Supplemental Comments at 1 ("NMPA supports the Office's proposal to apply the Standard Application fee to GRAM registrations.").

¹³⁵ The current cost per transaction is \$378 for the paper Form GATT.

¹³⁶ The current cost per transaction is \$411 for the paper Form CA.

filings that must use this paper form is also inherently complex, and all information has to be typed into the cataloging system by hand. Accordingly, the Copyright Office proposes increases to both of these fees.

Due to increased efficiency of the supplementary registration process, the fee to register a correction or amplification to a claim using the electronic system is proposed to decrease from \$130 to \$100.¹³⁷

2. *Renewal Claims*

The Copyright Office plans to adopt adjustments to the following renewal fees, as follows:

- Fee for renewal application to increase from \$100 to \$125
- Fee for renewal addendum to remain at \$100

The Copyright Office suggests increasing the renewal application fee to achieve a greater cost recovery. There were approximately 500 renewal registrations filed in fiscal 2016, each of which cost the Copyright Office \$146 to process. Increasing the renewal application fee and maintaining the current renewal addendum fee strikes a balance between encouraging the filing of more renewal claims and meeting a better overall cost recovery.

3. *Section 407 Receipts*

The Copyright Office plans that there should be no change to the following fee:

- Fee for issuance of a receipt for a section 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 Copyright Office concluded that the existing fee did not need to be changed.

4. *Recordation of Documents*

The Copyright Office plans to adopt the following fees for recordation services:

- Fee for recordation of a document (paper filing) to increase from \$105 to \$125

¹³⁷ The current cost per transaction is \$365 for the electronic form. As of July 2017, supplementary registration generally must be effectuated through the electronic application, although for some works the paper form (Form CA) must still be filed. *See* 37 C.F.R. § 202.6(e)(1)–(4).

- Fee for recordation of a document (electronic filing) to be set at \$95
- Fee for recordation of an additional transfer to decrease from \$105 to \$95
- Fee tier structure for recordation of additional titles to be based on the number of works, titles, and registration numbers provided, rather than number of titles alone
- Fee for recording groups of up to ten additional works associated with that document to increase from \$35 to \$60
- Fees for recording additional works provided in an electronic title list to remain at current levels

In the NPRM, the Copyright Office proposed increases to its recordation fees to help the Copyright Office better recover costs in this area. While the Copyright Office's eCO system permits electronic registration of most copyright claims, its recordation system—which is not part of eCO—remains a largely paper-driven process. Although the Copyright Office presently 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. These titles, which can number in the thousands, must each be individually indexed. Thus, the Copyright Office recommends that the base fee for recordation of a document increase from \$105 to \$125 to achieve a better cost recovery. Likewise, the proposed increase to \$60 for each ten additional titles associated with a recorded document will allow for greater cost recovery in the case of more complicated filings without overly burdening filers.

At the same time, the Copyright Office intends to lower the fee for recordation of an additional transfer from \$105 to \$95. This fee is charged when a single document involves multiple transfers or other transactions among more than two parties. While each transaction must be separately indexed, the Office incurs less cost in indexing the additional transaction, because no additional intake of the paper document is required, and so proposes lowering the fee to account for this reduced processing cost.¹³⁸

Additionally, the Copyright Office is developing a tool to migrate its recordation function to an electronic system, a process that has required both statutory changes and technological upgrades. In anticipation of the development of a new electronic recordation system at some point during the period that the new fee schedule is in place, the Copyright Office recommends a \$95 fee to achieve a 73% cost recovery and to reflect the anticipated cost efficiencies that will be achieved with an integrated electronic system.

The Copyright Office is also recommending adjusting the fee structure for the recordation of additional titles to adopt a formula based on a combination of the number of works, titles, and

¹³⁸ Copyright Office Fees, 83 Fed. Reg. 24,054, 24,061 (proposed May 24, 2018).

registration numbers, rather than the number of titles alone. The current recordation filing fee is comprised of (1) a base fee that includes one title, and (2) a titles fee for any additional titles beyond the first (sometimes called “alternate titles”).¹³⁹ Under this structure, the Copyright Office calculates the appropriate filing fee by counting the total number of title names for works to which the document pertains. To achieve a better cost recovery and to more equitably allocate its costs among remitters based on the size of their filings, the Copyright Office issued a supplemental June 2019 NPRM, which proposed to alter the fee structure from being titles-based to being works-based. This accounts for each additional title name *and* registration number provided beyond the first title name and/or first registration number.¹⁴⁰ Receiving no significant comments expressing concern regarding the tier structure, and one in support, the Copyright Office now intends to finalize this adjustment in fee structure.¹⁴¹

5. *Section 115 Notices of Intention*

The Copyright Office plans to adopt the following fees for the filing of Notices of Intention pursuant to section 115(b):

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

The Copyright Office proposes keeping the fees for section 115 notices at their current levels, which, following passage of the MMA, now relate only to non-digital phonorecord deliveries of a musical work.¹⁴² Post-MMA, the Office has received only nine section 115 notices, and has concluded the best approach is to retain the current fee and reassess the utility and efficiency of this license in the next fee study with new data on this narrower subset of filers now eligible to file this notice.

6. *Certification Fees*

The Copyright Office plans to adopt the following adjustments to its fees for the issuance of certifications:

¹³⁹ 37 C.F.R. § 201.3(c)(18); Copyright Office Fees, 84 Fed. Reg. 29,135, 29,136 (proposed June 21, 2019).

¹⁴⁰ Copyright Office Fees, 84 Fed. Reg. 29,135.

¹⁴¹ Author Services, Inc., Comments Submitted in Response to U.S. Copyright Office’s June 21, 2019, Supplemental Notice of Proposed Rulemaking at 1 (July 23, 2019) (“We support . . . how the titles/works will be counted relating to the document recordation fees.”).

¹⁴² See Notices of Intention and Statements of Account Under Compulsory License To Make and Distribute Phonorecords of Musical Works, 84 Fed. Reg. 10,685 (Mar. 22, 2019). For more information about the MMA, see <https://www.copyright.gov/music-modernization/>.

- Fee for issuance of additional certificate of registration to increase from \$40 to \$55
- Fee for certification of other Office records, including search reports, to remain at \$200 per hour

Based on the cost study, the Copyright Office proposes a modest increase to the fee for issuance of additional certificates of registration. The Copyright Office's current estimated cost for this service is \$284; however the Office believes that setting the fee at 60% cost recovery would be far too burdensome on requestors. The Office therefore proposes a slight increase of \$15 to improve cost recovery without creating an undue burden on requestors.

With respect to other types of Copyright Office records and search reports, as in past cost studies, the Copyright Office has determined that fee receipts cover less than the actual costs of providing certification services. The Copyright 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. As such, the Copyright Office is 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 remain at its current level.

7. Search Reports

The Copyright Office plans to adopt the following adjustments to search report fees:

- Fee for reference search reports other than licensing reports to remain at \$200 per hour, with a two-hour minimum
- Fee for estimate of search fee to remain at \$200 (credited to search fee)
- Fee for search report prepared from licensing records to remain at \$200 per hour, with a one-hour minimum

The Copyright Office proposes keeping the fees for search at their current levels to preserve a simple fee structure.

VI. Budgetary Impact of Proposed Fee Changes

While the Copyright Office understands that it is important to improve cost recovery, it is also aware that it provides critical public services. The IT infrastructure and policies backing those services must be modernized to meet the needs of copyright owners in the twenty-first century. The Copyright Office is grateful that Congress continues to support copyright modernization and has increased both taxpayer-funded appropriations and the Copyright Office's authority to use user fees for the expenses of modernization initiatives.

The Copyright Office's proposed fee schedule represents meaningful increases in fees for many of its services due to rising costs and inflation, but also balances cost recovery against the important national objectives of the Copyright Office's registration and recordation systems and related services. From past experience, the Copyright Office foresees a few possible impacts caused by these proposed changes. First, it is likely that any increase in registration fees will result in fewer claims, at least temporarily, as has been the case with past fee increases. Fewer claims means less revenue. Second, however, the Copyright Office anticipates, that the revenue lost due to a decrease in the number of claims will be at least partially offset by the revenues generated by the higher fees for those services. Third, the Copyright Office projects that the loss of revenue resulting from the MMA's elimination of most section 115 notices of intention will not be recovered through the higher fees proposed herein. The projected fee receipts under the basic budget will hence be roughly \$36.5 million, which is approximately \$2.7 million below the Copyright Office's fiscal 2019 fee spending authority of \$39 million from fiscal 2019 fee collections. The Copyright Office will seek to make up this fiscal 2019 shortfall through an additional appropriations request.

VII. Modernization and Future Fees

As with all fee studies, the fees in this proposed schedule will not remain at this level permanently. The Copyright Office, as per its usual practice, will be proposing to adjust fees again in the next three to five years. In connection with this process, the Copyright Office expects to examine alternative vehicles for variable fee setting, including through further solicitations for public comment.¹⁴³ And as the Copyright Office deploys a modernized Enterprise Copyright System, it hopes to realize operational efficiencies that will allow it to consider reducing fees or maintaining them at current levels.

VIII. Conclusion

The Copyright Office takes 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 Copyright 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.

¹⁴³ See Registration Modernization, 83 Fed. Reg. 52,336, 52,339 (Oct. 17, 2018) (discussing dynamic pricing models).

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**

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

	FY16 Volume	Total Costs (\$)	FY16 Fee (\$)	Revenue (\$)	Cost Recovery (%)	Elastic (E/I)	Calculated Cost Per Volume (\$)	New Fee (\$)	Elasticity Change in Demand (%)	Projected New Revenue (\$)	Projected Cost Recovery (%)
Single Application	143,863	12,121,978	35	5,035,205	42	E	84	45	-9	5,881,950	49
Standard Application	348,620	30,968,379	55	19,174,100	62	E	89	65	-6	21,341,905	69
Paper Application	24,549	2,854,925	85	2,086,665	73	E	116	125	-15	2,606,500	91
GR Periodicals	15	1,044	85	1,275	122	E	70	85	0	1,275	122
GR Published Photographs	1,533	433,867	65*	99,645	23	E	283	55	5	88,440	20
GR Unpublished Photographs [†]	1,533	433,867	–	–	–	E	283	55	–	84,315	19
GR Photographic Database [‡]	–	–	55	–	–	E	–	250	-113	–	–
GR Non-Photographic Database	273	189,121	85	23,205	12	I	693	500	-78	30,000	16
GR Serials (electronic) [§]	–	–	25	–	–	E	76	35	–	–	–
GR Serials (Form SE)	6,603	655,504	25	165,075	25	E	99	70	-58	196,000	30

* In fiscal year 2016, unless applicants obtained permission to participate in a pilot program to submit electronic applications to register groups of published photographs for a fee of \$55, they had to use the paper Form GR/PPh/CON for a fee of \$65. Form GR/PPh/CON was eliminated effective February 20, 2018. *See* 83 Fed. Reg. 2542 (Jan. 18, 2018).

† The online application to register a group of unpublished photographs was established in fiscal year 2018. *See* 83 Fed. Reg. 2542 (Jan. 18, 2018).

‡ Insufficient volume to calculate cost.

§ The online application to register a group of serials was established in fiscal year 2019. *See* 83 Fed. Reg. 61,546 (Nov. 30, 2018).

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

	FY16 Volume	Total Costs (\$)	FY16 Fee (\$)	Revenue (\$)	Cost Recovery (%)	Elastic (E/I)	Calculated Cost Per Volume (\$)	New Fee (\$)	Elasticity Change in Demand (%)	Projected New Revenue (\$)	Projected Cost Recovery (%)
GR Newspapers and Newsletters*	–	–	80	–	–	E	64	95	–	–	–
GR Unpublished Works†	–	–	–	–	–	E	–	85	–	–	–
GR Works on an Album‡	–	–	NPRM	–	–	E	–	65	–	–	–
GR Short Online Literary Works§	–	–	NPRM	–	–	E	–	65	–	–	–
Restored Copyright	113	42,738	85	9,605	22	E	378	100	-6	10,700	25
Supplementary Registration	1,408	514,100	130	–	–	I	365	100	–	140,800	27
Supplementary Registration (Form CA)	1,408	578,876	130	183,040	32	I	411	150	-2	205,950	36
Renewal	512	74,889	100	51,200	68	E	146	125	-8	58,875	79
Renewal Addendum	244	15,964	100	24,400	153	E	65	100	0	24,400	153

* The online applications to register a group of newspapers and newsletters were established in fiscal years 2018 and 2019. *See* 83 Fed. Reg. 61,546 (Nov. 30, 2018); 83 Fed. Reg. 4144 (Jan. 30, 2018).

† The group registration option for unpublished works was established in fiscal year 2019. *See* 84 Fed. Reg. 3693 (Feb. 13, 2019).

‡ The Office began a rulemaking proceeding proposing a new group registration option for musical works, sound recordings, and associated literary, pictorial, and graphic works contained on an album in fiscal year 2019. *See* 84 Fed. Reg. 22,762 (May 20, 2019).

§ The Office began a rulemaking proceeding proposing a new group registration option for short online literary works in fiscal year 2019. *See* 84 Fed. Reg. 65,612 (Dec. 21, 2018).

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

	FY16 Volume	Total Costs (\$)	FY16 Fee (\$)	Revenue (\$)	Cost Recovery (%)	Elastic (E/I)	Calculated Cost Per Volume (\$)	New Fee (\$)	Elasticity Change in Demand (%)	Projected New Revenue (\$)	Projected Cost Recovery (%)
Section 407 Receipts*	–	–	30	–	–	E	–	30	0	–	–
Document Recordation (paper)	10,865	1,673,617	105	1,140,825	68	E	154	125	-6	1,275,375	76
Document Recordation (electronic)†	–	–	–	–	–	E	–	95	–	–	–
Additional Transfers‡	–	–	–	–	–	E	–	95	3	–	–
Additional Works (up to 10) (paper)	15,071	1,560,338	35	527,485	34	E	104	60	-23	697,560	45
115 Notice of Intention (paper)§	2,252	688,416	75	168,900	25	I	306	75	–	–	–
115 Notice of Intention (electronic)**	2,695	729,421	75	202,125	28	I	271	75	–	–	–

* Insufficient volume to calculate cost.

† New fee.

‡ Insufficient volume to calculate cost.

§ The Office cannot precisely project 115 filing volumes due to the impact of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”).

** The Office cannot precisely project 115 filing volumes due to the impact of the MMA.

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

	FY16 Volume	Total Costs (\$)	FY16 Fee (\$)	Revenue (\$)	Cost Recovery (%)	Elastic (E/I)	Calculated Cost Per Volume (\$)	New Fee (\$)	Elasticity Change in Demand (%)	Projected New Revenue (\$)	Projected Cost Recovery (%)
115 Additional Titles (up to 10) (paper)*	3,016	872,428	20	60,320	7	I	289	20	–	–	–
115 Additional Titles (up to 100) (electronic)†	–	–	10	–	–	I	–	10	–	–	–
Additional Certificate	2,917	827,817	40	116,680	14	E	284	55	-12	141,185	17
Certification of Office Records	136	42,451	200	27,200	64	I	312	200	0	27,200	64
Non-Licensing Search Report‡	386	254,702	200	77,200	30	E	660	200	0	77,200	386
Licensing Search Report§	–	–	200	–	–	–	–	200	0	–	–
Search Estimate**	–	–	200	–	–	–	–	200	0	–	–

* The Office cannot precisely project 115 filing volumes due to the impact of the MMA.

† Insufficient volume to calculate cost. The Office cannot precisely project 115 filing volumes due to the impact of the MMA.

‡ Per hour, two-hour minimum. Insufficient volume to calculate cost.

§ Per hour, one-hour minimum. Insufficient volume to calculate cost.

** Estimate credited to search fee. Insufficient volume to calculate cost.

