

(ii) *Enforcement Period.* This section is enforced annually on the third Saturday of July each year from 9 p.m. to 11 p.m. (PDT). Except that when the first Saturday falls on July 1, this section will be enforced on the fourth Saturday of July. In 2006, this zone will be enforced on July 22th.

(14) *Splash Aberdeen Waterfront Festival, Aberdeen, WA:*

(i) *Location.* All water of the Chehalis River extending out to 500 feet of the following points: 46°58'40" N, 123°47'45" W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(15) *City of Coos Bay July 4th Celebration, Coos Bay, OR:*

(i) *Location.* All water of the Coos River extending out to 1200 feet of the following points: 43°22'12" N, 124°12'39" W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

* * * * *

Dated: March 20, 2006.

Patrick G. Gerrity,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2006-1]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of new fees for special services and Licensing Division services, and that the Office has submitted to Congress proposed new statutory fees for certain other services. The proposed fees would recover a significant part of the costs to the Office of registering claims and provide full cost recovery for many services provided by the Office which benefit only or primarily the user of that service.

DATES: Comments should be in writing and received on or before April 27, 2006.

ADDRESSES: If hand delivered by a private party, an original and ten copies

of any comment should be brought to Room LM-401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If sent by mail, an original and five copies of any comment should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0400. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT:

Tanya M. Sandros, Associate General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel, Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Section 708 of the copyright law establishes two separate procedures for adjusting fees for Copyright Office services to account for increases in costs. Fees for services specifically enumerated in section 708(a)(1)-(9) ("statutory fees") are adjusted according to the procedures set forth in section 708(b). This procedure includes the completion of a cost study, and the forwarding of an economic report and proposed fee schedule to Congress, which takes effect unless Congress enacts a law within 120 days disapproving of the new fees. The second procedure concerns fees for services not specifically enumerated in section 708(a)(1)-(9), and for the purposes of this rulemaking, these fees are termed "discretionary fees." Section 708(a) authorizes the Register to set these fees at "the cost of providing the service." As with the statutory fees, the Copyright Office adjusts the discretionary fees only after conducting a cost study to determine the cost of providing the services.

This is the third schedule of fees to be proposed under the current fee setting procedure which was adopted when section 708 was amended in 1997 with the passage of the Technical

Amendments Act, Public Law 105-80, 111 Stat. 1529. The first schedule was adopted in 1999, see 63 FR 43426 (August 13, 1998) and 64 FR 29518 (June 1, 1999), and the second schedule was adopted three years later in 2002. To cover the rising costs of providing copyright services, most fees were increased in 2002. However, notable among fees that were not adjusted at that time was the basic registration filing fee, which was kept at the 1999 level. The Register provided a number of reasons for her determination that no increase in basic registration fees was warranted at the time. They included the substantial increase of 1999 which accounted for an acceptable level of cost recovery, the costs associated with increasing the fee, and the changes in processing anticipated from the Copyright Office's impending business process reengineering effort. 67 FR 38003 (May 31, 2002).

Because costs have continued to rise since the last fee adjustment in 2002, the Office undertook a third cost study to assess how well current fees allowed the Copyright Office to recover its costs of providing its services to the public. The result of that study is today's proposal to increase most fees to a level that allows the Office to recover a significant portion of its costs as contemplated by Congress.

I. Overview

The expenses of the Copyright Office have always been substantially funded through the charging of fees for the services provided, although programs relating to domestic and international copyright policy and public information have been generally paid for by appropriated funds. Yet, for the last fifty years, fees have not provided for full cost recovery. During this period, cost recovery through the charging of fees has ranged from 50% to 80% of the expenses of the Copyright Office. In fiscal year 2005, the Copyright Office collected \$23,788,227 in fees, sufficient to offset only 56.7% of the total expenditures of the Office, whereas in 2002, fees covered just over 66% of the Office's costs for providing its services.

In order to place the Copyright Office on a sounder financial footing, a cost study was undertaken last year by the Office which evaluated all the fees charged by the Copyright Office. Based upon its findings, the Office determined that most fees for services mandated by statute should be adjusted to reflect increased costs of providing the various services. These proposed new fees falling within the rate adjustment procedure of section 708(b) were submitted to Congress on March 1,

2006. Congress now has 120 days to consider these fees. During that time, the Office is also providing the public with an opportunity to comment on the statutory fees which the Office intends to adjust to recover the increased costs of providing the specified services.

Section 708(a) also provides the Register of Copyrights with authority to fix fees for other services based on the cost of providing that service. Like the statutory fees, the Office is proposing to adjust these discretionary fees to reflect increases in the cost of providing those services and, in those instances where the service benefits primarily the user of that service, the fee has been set to recover the full cost to the Office of providing that service. However, before adopting these proposed new fees, the Office is providing the public with an opportunity to comment. The Copyright Office plans to implement the new discretionary fees on the same day the statutory fees are scheduled to become effective, July 1, 2006.

II. Discretionary Fees

In general, the proposed discretionary fees have been adjusted to reflect the current cost of providing the service. Before making this decision, the Office conducted a study of the costs of the services provided and took into account the criterion that the Register may set fees at a level no more than necessary to recover the reasonable costs incurred by the Copyright Office. Because costs have increased, and the Register is keenly aware of Congress's basic criterion of cost recovery, most fees will be increased. Some will be increased at full cost recovery where the service benefits only or primarily the requester, e.g. secure test processing, expedited handling of claims, and expedited searches. Fees for first and second level reconsideration of refusal to register a claim are also being increased, but not at the level of full cost recovery, since it may be helpful to courts to have the claims reexamined at a higher level, and the purpose of providing such review is to ensure that the Office's decisions on registration comply with the applicable legal standards.

While this notice will not discuss each fee increase individually because fees have been adjusted either to recover the cost of the service or to account for the rate of inflation since the last fee adjustment, the Copyright Office believes further clarification is useful for the following fees.

1. *Registration of GATT Group.* The Copyright Office has decided to eliminate the option of registering up to ten related, restored works published within the same calendar year as a

GATT/Group. This service is seldom used and it is costly to the Office. Consequently, GATT/Group has been listed as discontinued. However, works that would have been filed under this provision can still be registered, although each work must be registered individually. Technical amendments will be made in the final rule to 37 CFR 202.12(c) to reflect this change.

2. *Recordation of Notices of Intent to Enforce (NIE's).* With the enactment of section 104A of the copyright law in 1993, the Copyright Office was given the responsibility of recording documents known as Notices of Intent to Enforce copyrights restored under the Uruguay Round Agreements Act. Because the term of eligibility for filing NIE's has concluded for most countries, this is now a seldom used service. The Copyright Office has decided to apply the same fees to NIE's as are applicable to other recorded documents.

3. *Search estimate by the Reference & Bibliography Section.* Currently, the Reference & Bibliography Section provides a free written estimate of the number of hours which will likely be needed to complete a search and report and an estimate of the fee to conduct this search. But in order to arrive at the estimate, the Reference and Bibliography Section actually performs a major part of the search; and if the client requesting the estimate decides not to order the search, the Office receives no fee to cover its cost of providing the estimate. Consequently, the Office will no longer provide free estimates under the new fee schedule. Instead, as with other services that are primarily for the benefit of the user, the Copyright Office is setting the fee at a level to recover its cost for the service provided. The fee to prepare a written estimate will now be \$100. If the client requests that the search and report be undertaken, the \$100 fee will be applied to the total fee charged.

4. *Handling fee for extra deposit copy for certification.* For claimants who wish to obtain certified copies of their deposits after issuance of the certificate of registration, the Copyright Office will accept an extra deposit copy to be certified upon registration of the claim. The current fee for this service is the same as the fee for the basic registration and it has been adjusted under the new schedule to the same level as the basic registration fee.

5. *Expedited Reference & Bibliography Search and Report.* The Copyright Office is adopting an hourly fee for providing a written search report based on an expedited search of the Copyright Office records. This fee replaces the current hourly fee and

surcharge now used to cover the costs of these services. The new single fee covers both the search and the written report and has been calculated to maintain full cost recovery.

6. *Copying fees.* Current fees do not recover the costs of providing copies of Copyright Office records or copies of deposits, often exceeding by approximately 50% the amount of fees received by the Office for these services. To eliminate this shortfall, the new fees for various forms of reproductions have been increased by up to 50% and, in the case of photocopying documents, a minimum fee of \$6.00 has been added to cover the administrative costs of handling these requests. Moreover, the Office has decided to harmonize the fees for photocopying throughout the Office.

III. Statutory Fees

The Office is basing its conclusion that most statutory fees should be increased upon its findings from the cost study and after considering a number of policy and economic factors such as fairness and equity and consideration of the objectives of the copyright system, projected inflation, and the effect of these increases on the public's decision to utilize these services. In light of these considerations, a number of statutory fees have been adjusted to achieve or maintain full cost recovery, e.g., the fees for filing a supplemental registration, filing a registration for renewal or for a group of related works, issuing a receipt for a deposit under 17 U.S.C. 407, recording documents of various types, and providing additional certificates, whereas other statutory fees have been adjusted only to account for inflation since the last fee adjustment in 2002.

Moreover, the Office has concluded that the basic registration filing fee, which was not adjusted in 2002, should be increased by 50% this year from \$30 to \$45. However, this increase does not reflect full cost recovery for the service provided nor does the Office seek to recover its full cost for registration of a single claim. The registration system provides benefits to the public and to the Library of Congress that offset the need to set fees at a level that would recover full costs. Although the copyright law provides incentives to register copyrights, see 17 U.S.C. 410(c), 411(a), and 412, the Office nevertheless recognizes that copyright owners balance the benefits of these incentives against the costs of registration, and that there is a fair degree of price elasticity with respect to registration. Therefore, the Office has set the fee for the basic registration at a level to allow reasonable recovery of costs but not so

high as to discourage copyright owners from filing their claims with the Office.

The "Analysis and Proposed Copyright Fee Schedule to Go into Effect July 1, 2006," which was submitted to Congress on March 1, 2006, is posted on the Office's Web site

at: <http://www.copyright.gov/reports/studies/proposedfees2006.pdf>.

IV. Proposed New Statutory and Filing Fees

Based upon the cost study prepared by the Copyright Office, the Copyright

Office is proposing a new fee schedule for registration and related services, special services, and Licensing Division services.

A comparison of existing and new fees is included in the following charts:

| | Current fees | Fee to become effective July 1, 2006 |
|---|--------------|--------------------------------------|
| Registration, Recordation and Rated Services | | |
| (1) Registration of a basic claim in an original work of authorship: Forms TX, SE, PA, VA (including Short Forms), and Form SR | \$30 | \$45 |
| (2) Registration of a claim in a group of contribution to periodicals (GR/CP) | 30 | 45 |
| (3) Registration of a renewal claim (Form RE): Claim without Addendum | 60 | 75 |
| Addendum | 30 | 220 |
| (4) Registration of a claim in a mask work (Form MW) | 75 | 95 |
| (5) Registration of a claim in a group of serials (Form SE/Group) [per issue, with minimum 2 issues] ¹ | 15 | 25 |
| (6) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN) | 55 | 70 |
| (7) Registration of a claim in a restored copyright (Form GATT) | 30 | 45 |
| (8) Registration of a claim in a group of restored works (Form GATT Group [per issue, with \$45 minimum] ² | 15 | discontinued. |
| (8) Registration of a group of published photographs ³ | NA | 75 |
| (9) Preregistration of certain unpublished works ³ | 100 | 150 |
| (10) Registration of a correction or amplification to a claim (Form CA) | 100 | 115 |
| (11) Providing an additional certificate of registration | 30 | 40 |
| (12) Certification of other Copyright Office records (per hour) | 80 | 150 |
| (13) Search-report prepared from official records (per hour) | 75 | 150 |
| Estimate of search fee ⁴ | NA | 100 |
| (14) Location of Copyright Office records (per hour) | 80 | 150 |
| Location of in-process materials (per hour) | 100 | 150 |
| (15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title) | 80 | 95 |
| Additional titles (per group of 10 titles) | 20 | 25 |
| (15) Recordation of a Notice of Intention to Enforce (NIE) a restored copyright containing no more than one title ⁵ . | 30 | discontinued, see item 14. |
| Additional NIE titles (each) | 1 | discontinued, see item 14. |
| (16) Recordation of Notice of Intention to Make and Distribute Phonorecords | 12 | 12 |
| (17) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under § 512(c)(2) ³ . | 30 | 80 |
| (18) Issuance of a receipt for a § 407 deposit | 10 | 20 |
| (19) Registration of a claim in a vessel hull ³ | 140 | 200 |
| Special Services | | |
| (1) Service charge for deposit account overdraft | 100 | 150 |
| (2) Service charge for dishonored deposit account replenishment check | 35 | 75 |
| (3) Appeals: (i) First appeal | 200 | 250 |
| Additional claim in related group | 20 | 25 |
| (ii) Second appeal | 500 | 500 |
| Additional claim in related group | 20 | 25 |
| (4) Secure test processing charge, per hour | 60 | 150 |
| (5) Copying of Copyright Office Records by staff, ³ Photocopy (b&w) (per page, minimum \$6) | 0.50 | 0.50 |
| Photocopy (color) (per page, minimum \$6) | 1 | 1.50 |
| Photograph (Polaroid) | 10 | 15 |
| Photograph (digital) | 30 | 45 |
| Slide | 2 | 3 |
| Audiocassette (first 30 minutes) | 50 | 75 |
| Additional 15 minute increments | 20 | 20 |
| Videocassette (first 30 minutes) | 50 | 75 |
| Additional 15 minute increments | 25 | 25 |
| CD or DVD | 40 | 50 |
| Zip or floppy disk | 75 | 100 |
| (6) Special handling fee for a claim | 580 | 685 |
| Each additional claim using the same deposit | 50 | 50 |
| (7) Special handling fee for recordation of a document | 330 | 435 |
| (8) Handling fee of extra deposit copy for certification ⁶ | 30 | 45 |
| (9) Full-term retention of a published deposit | 425 | 425 |
| (10) Expedited Reference and Bibliography search and report ⁷ | NA | 400/hr. |
| (surcharge, per hour) | 250 | discontinued. |
| (11) Expedited Certification & Documents services (surcharge, per hour) | 200 | 240 |
| (12) Notice to Libraries and Archives ³ | 50 | 50 |

| | Current fees | Fee to become effective July 1, 2006 |
|--|--------------|--------------------------------------|
| Each additional title | 20 | 20 |
| (13) Use of COINS terminal in LM-B14 (per hour) ³ | 20 | 25 |
| (14) Fed Ex Service ³ | 15 | 35 |
| (15) Delivery of documents via facsimile (per page, 7 page maximum) ³ | 1 | 1 |

Licensing Division Services

| | | |
|--|------|----------------------------|
| (1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) | 12 | 12 |
| (2) Certificate of Filing a Notice of Intention (17 U.S.C. 115) | 8 | discontinued. ⁹ |
| (3) Filing Fee for Recordation of License Agreements under 17 U.S.C. 118 | 50 | 125 |
| (4) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States. | 50 | 50 |
| (5) Initial Notice of Digital Transmission of Sound Recording (17 U.S.C. 114) | 20 | 20 |
| Amendment of 17 U.S.C. 114 Notice | 20 | 20 |
| (6) Statement of Account Amendment (Cable Television Systems and Satellite Carriers, 17 U.S.C. 111 and 119). | 15 | 95 |
| (7) Statement of Account Amendment (Digital Audio Recording Devices or Media, 17 U.S.C. 1003) ⁸ | 20 | 95 |
| (8) Photocopy made by staff (b&w) (per page, minimum \$6) | 0.40 | 0.50 |
| (9) Search, per hour | 65 | 150 |
| (10) Certification of Search Report | 65 | 150 |

¹ Amended to replace \$45 minimum with a 2 issues minimum.

² To be removed; *see* section II 1.

³ New items: fees not currently listed in 37 CFR 201.3(d).

⁴ New fee, *see* section II 3.

⁵ *See* section II 2.

⁶ New item: fee not currently listed in 37 CFR 201.3(d), *see* section II 4.

⁷ New fee, *see* section II 5.

⁸ To be combined with item 6 in the final regulation.

⁹ Discontinued service, *see* 69 FR 34582 (June 2, 2004).

V. Technical Amendments

The Office will adopt technical amendments as needed to conform existing regulations with the changes proposed in this notice.

VI. Request for Comments

The Copyright Office is publishing the proposed new fees in order to provide the public with an opportunity to comment by April 27, 2006. The new fees will take effect on July 1, 2006, unless the Copyright Office has received adverse substantive comments, and

publishes a notice withdrawing the new fees before that date.

Dated: March 21, 2006.

Tanya M. Sandros,
Associate General Counsel.

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