



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

NOTICE OF PROPOSED RULEMAKING.

FEES

The following excerpt is taken from Volume 63, Number 62 of the
Federal Register for Wednesday, April 1, 1998 (pp.15802-15806)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204 and
211

[Docket No. 98-2]

Fees

AGENCY: Copyright Office, Library of
Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is issued to inform the public that the Copyright Office is proposing new fees for special services. The effect of these proposed amendments is to increase existing fees and to institute fees for existing special services as authorized in the Copyright Act. These fees are limited to such special services, and each fee is based on the actual cost to the Office of providing that service. The proposed amendments include revisions to existing fees covering full-term storage, special handling of copyright registration, and other expedited services. They also institute new fees for existing services such as processing appeals and handling underfunded deposit accounts.

DATES: Written comments are due by May 11, 1998.

ADDRESSES: An original and fifteen copies of the comments should be addressed, if sent by mail, to: David O. Carson, General Counsel, Copyright GCI&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, United States Copyright Office, James

Madison Memorial Building, Room 403,
First Street and Independence Avenue, S.E.,
Washington, D.C.

FOR FURTHER INFORMATION

CONTACT: Marilyn J. Kretsinger, Assistant
General Counsel, or Patricia Sinn, Senior
Attorney, Copyright GCI&R, P.O. Box
70400, Southwest Station, Washington, D.C.
20024, or telephone (202) 707-8380. Fax:
(202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Authorization

The Copyright Office is funded annually by congressional appropriation; however, the total appropriation includes a credit based on an estimate of the projected fee income to be received during a fiscal year for services provided.

Title 17, United States Code, section 708, authorizes the Register of Copyrights to require payment of fees for services specifically described in section 708(a)(1)-(9) such as registration, recordation, and certification. These "statutory" fees must be set or approved by Congress. See Pub. L. No. 105-80, 111 Stat. 1529 (1997). In addition, paragraph 708(a)(10) permits the Register to require for "any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service." Commonly referred to as discretionary fees, these latter fees relate to services not within the Office's ordinary functions such as special handling and other expedited services and may be set by the Register based on the cost to the Office of providing the service.

Although the Office was authorized to increase statutory fees in 1995, it did not do so. It did, however, increase discretionary fees in 1994. See 58 FR 38369 (July 28, 1994).

Congress continues to encourage every federal agency to recover the costs of its operations. Legislation was passed by the 105th Congress and signed into law on November 13, 1997, which amended 17 U.S.C. 708(b) to give the Register in calendar year 1997, and in any subsequent calendar year, the authority to increase fees specified in 17 U.S.C. 708(a), following study of the costs incurred by the Office for providing services. Pub.L. No. 105-80, 111 Stat. 1529 (1997). In that legislation Congress directed the Office to set fees that recover the reasonable costs, but to consider whether a proposed fee is fair and equitable and gives due consideration to the objectives of the copyright system.

B. Studies Emphasizing Cost Recovery

In the past few years there have been several studies of existing Copyright Office fees. The General Accounting Office (GAO) reviewed Copyright Office practices and operations and issued a final report on May 9, 1997, titled Report to the Chairman, Committee on the Judiciary, U.S. Senate, INTELLECTUAL PROPERTY: Fees Are Not Always Commensurate with the Costs of Services. GAO concluded that "Congress may wish to consider whether the Copyright Office should achieve full cost recovery through fees. GAO/RCED-97-113, at 7-8, May 9, 1997. GAO also issued a report following a management review of the Library which recommended full recovery of copyright costs (Library of Congress: Opportunities to Improve General and Financial Management, GAO/T-GGD/AIMD-96-115, May 7, 1996). Congress has also

indicated that the Office should recover a greater percentage of its costs.

The Copyright Office has directed a comprehensive study by an outside consultant of the operating costs involved in providing services to users to determine whether fees should be adjusted. Working with a task force within the Office, the consultant examined existing fees for services, identified costs for other services, and calculated the costs of providing each service.

C. Office Assessment of Fees

The Office then examined the fees identified by the consultant in light of operational and other considerations and determined what it should propose as a fee for each service. The Office has endeavored to ensure that each service it provides not only supports copyright owners and users but also recovers reasonable costs. It is aware that special services provided to identifiable recipients should carry a charge that recovers the cost of providing those services.

Based on its analysis, the Office is proposing a number of new fees for existing special services.¹ In the past the costs of these special services have been absorbed by the Office. The new fees include fees for handling underfunded deposit accounts, and processing appeals. The Office is also proposing adjustments to existing fees for special services.

II. Institution of New Fees for Special Services

A. Deposit Accounts

The Copyright Office maintains a system of deposit accounts for the convenience of those who frequently use its services. A deposit account holder can charge copyright fees against the balance in his or her deposit account instead of sending separate remittances with applications and other requests for services. One advantage for the holder of a deposit account is that the Office may begin the work immediately if sufficient funds are in the account.

The Office proposed a number of fees for maintaining deposit accounts in 1994. 59 FR 38400 (July 28, 1994). Based on the comments it received, the Office decided not to move forward with any charges at that time. Moreover, despite considerable expense to the Office in maintaining deposit accounts, it is not now proposing a maintenance fee for deposit accounts primarily because the use of deposit accounts is beneficial both to the holder and the Office. The Office is, however, proposing two new fees related to handling underfunded deposit accounts. A deposit account holder may avoid both of these charges by keeping his or her deposit account balance at a level sufficient to cover all claims submitted. A new system that produces timely deposit

account statements is in place to assist account holders in regulating their business.

1. Service fee for Deposit Account Overdraft—\$70.00

The first new fee would cover overdrafts caused when a deposit account holder has insufficient funds to process claims. When deposit account funds are not sufficient to cover registration, the Office sets aside the claim until the account holder is contacted and funds are forwarded to the Office. To offset expenses incurred for handling an overdrawn account, the Office proposes to charge a \$70.00 fee per instance (not per claim). This fee will be deducted from the replenishment funds forwarded by the deposit account holder.

2. Dishonored Check Fee From Deposit Account Holder—\$35.00

The Office is also proposing a fee when a deposit account holder's check is dishonored because of insufficient funds in an applicant's account, or for other banking problems. By the time the Office discovers that a check cannot be negotiated, it has already expended staff time and resources to process the paperwork. The Office proposes to charge a fee of \$35.00 to cover the administrative expenses incurred in processing the dishonored check. This fee will be deducted immediately or, if the account is in arrears, upon successful replenishment.

B. Short Fee Service Charge—\$20.00

A "short fee" is a remittance paid by cash, check, or money order to the Copyright Office which is not sufficient to pay for the requested service. Any time new statutory fees are instituted, the Office gets a number of fees that are insufficient. For the first year after the last statutory fee adjustment, 20% of the cash fees were insufficient. When a fee is insufficient, the Office deposits the money submitted, holds the claim, and asks the remitter for additional money to complete the fee. To recover the administrative cost of processing this material, the Office proposes to charge a \$20.00 short fee per submission.

Although the Office is still getting short fees from the 1991 increase on statutory fees, it does not plan to implement a short fee service charge until on or about January 1, 2000. The Office will notify the public of the new statutory fees.

C. Appeals—1st Appeal \$200.00, 2nd Appeal \$500.00, Additional Related Claim \$20.00

The Office has long accepted appeals from initial refusals to register a claim to copyright, but there has been no separate charge above the initial registration fee for reconsidering the claim. The Office has a two level review of appeals; the first request for reconsideration goes to the Examining Division. Since 1995, the second request for reconsideration has been reviewed by a three member Board of Appeals. The processing of appeals is very labor intensive, and the fee to recover actual costs would be more than three times the fee the Office is proposing. The Office determined, however, that the fee for appeals should be less since U.S. applicants must attempt to register before initiating a copyright infringement suit and must exhaust administrative remedies before initiating an action against the Register under the Administrative Procedure Act for refusal to register. The Office is, therefore, proposing a fee of \$200.00 for first appeals, plus an additional fee of \$20.00 for each related claim after the first for a group of related works on which one appeal is filed. The Office is proposing a fee of \$500.00 for second appeals, with an additional fee of \$20.00 for each related claim. For example, if an appellant appeals the rejection of four related jewelry designs, the cost of the first appeal would be \$260.00; if the same appeal goes to the Board, the cost would be \$560.00.

D. Secure Tests Processing Fee Per Hour—\$60.00

Secure tests are nonmarketed tests administered under supervision at specified sites on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. Publishers of these tests ensure the confidentiality of the tests by protecting and retaining the test materials. To maintain secrecy, the Office examines these test materials in the presence of the applicant, but outside the regular work station, and returns the test material to the applicant, keeping only a small portion of material photocopied from the original as the permanent deposit of identifying material. The applicant thus gets special treatment. In the past, the Office has made no assessment for special processing of these secure tests; it is proposing a \$60.00 per hour fee to recover costs for labor and special arrangements.

III. Fee Adjustments to Fees for Special Services

A. The Office is Also Proposing the Following Increases to Current Fees for Special Services

1. Copying fee—\$15.00 Minimum, \$1.00/ Page up to First 15, \$.50 per Page Thereafter

¹ The Office does not plan to amend statutory fees until next year; after extensive opportunity for public hearings, it will propose a new schedule for Congressional review.

The Office will continue to duplicate records maintained in its custody under conditions detailed in the applicable regulatory provisions. The Office proposes to change its current charges for copying of black and white material that cannot leave the custody of the Office to \$1.00 per page for the first 15 pages. For large documents the Office proposes a fee based on a sliding scale; it proposes a fee of \$.50/page for every page after the fifteenth. Thus the proposed fee for copying a 50 page document will be \$32.50. The higher copying cost for the first 15 pages of this material is justified because of the time staff needs to set up the material copied and to verify the complete accuracy of the copy. The minimum fee for black and white material will be \$15.00. The Office is not changing its copying fee for color material.

2. Inspection Fee—\$65.00

The Office currently charges a daily fee of \$10.00 to a customer who wishes to inspect deposits of Copyright Office records on the premises. The service is provided by the Certifications and Documents Section of the Information and Reference Division. A Copyright Office employee monitors the inspection to ascertain that no copying of the deposit takes place. The proposed fee of \$65.00 will be charged in combination with the applicable search fee to locate and retrieve the material being inspected.

3. Special Handling fee for Registration—\$500.00 Additional Claim \$50.00

Although the effective date of registration is the date the application, required fee, and deposit are received, it takes the Office several months to process a claim and mail the certificate of registration. Special handling is granted at the discretion of the Register as a special service to copyright applicants who have a compelling reason for the expedited issuance of a certificate of registration. A request for special handling is granted in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate expedited service.

Special handling affects every step of the registration or recordation process. A claim that receives special handling must be processed outside the regular system of first in—first out, necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of a claim to assure both that it moves expeditiously through the necessary procedures and that it can be located quickly should the need arise.

The fee for special handling was last increased in 1994 to \$330 plus the registration fee. 59 FR 38369 (July 28, 1994). The proposed new fee is \$500.00 plus the registration fee. The terms under which a

request for special handling is approved or denied will not be altered. If a claim is eligible for special handling, the Copyright Office makes every effort to process the claim or notify the applicant of any problem in processing the claim within five working days after the request has been approved. To ensure expedited treatment, the claimant should deliver the material to the Public Information Office.

4. Special Handling fee for Recordation of a Document—\$330.00

The Office will maintain its fee of \$330.00 for this service. The same factors involved in special handling for registration claims described above apply almost entirely to special handling for recordation of a document. One major difference is that the Office has centralized most aspects of the documents recordation process. This centralization means that special handling for documents is less costly to the Office than special handling for registration and no fee change is necessary.

5. Full Term Storage of Deposits of Published Works—\$365.00

Full term storage of unpublished works is mandated by the Copyright Act. The Office's policy is to retain deposit copies of published works for at least five years from the date of deposit; if practicable, it retains works of visual arts for ten years. The Office also offers full term retention of deposit copies of published works upon payment of a fee. The purpose of this service is to assure copyright owners that the deposit copies of their published works will be kept in the Copyright Office's custody for the full term of copyright, which can be up to 125 years.

Congress authorizes a fee for full term storage in 17 U.S.C. 704(e). Previously the cost for this service was \$270.00; however, due to increased costs, the Office proposes a fee of \$365.00.

B. Surcharge for Expedited Certifications and Documents Services

Fees for services requested on an expedited basis from the Certification and Documents Section must be increased to reflect more accurately the Office's actual costs and expenses. The Office is aware, however, that some of these services can only be performed by the Office and that fact was considered in proposing new fees.

Those who request special services do so for the same purposes that lead to requests for special handling. Special service requests require disruption of normal work flow; therefore, the service is more costly to the Office. These are all unique services, and the increased costs take into account the fact that extraordinary efforts are often

required both in time and places searched. Often Copyright Office employees must travel to an off-site storage facility to expedite a search.

1. Additional Certificate, in Process Search, Copy of Assignment—\$75.00/Hour

The current fee for providing an expedited additional certificate, performing an in-process search for material related to a claim, or furnishing a copy of an assignment or certification is \$50.00 per hour. The Office proposes a \$75.00 per hour fee for any of these services.

2. Copy of Registered Deposit—First Hour \$95.00; Each Additional Hour \$75.00

The fee for providing an expedited copy of a registered deposit which is stored off-site in a Copyright Office storage facility is currently \$70.00 per hour. The Office proposes a fee for these services of \$95.00 for the first hour required to perform the service; and \$75.00 for each additional hour or portion thereof.

3. Copy of Correspondence File—First Hour \$95.00, Each Additional Hour \$75.00

The fee for expedited provision of a copy of a correspondence file whether stored on the Copyright Office premises or at an off-site Copyright Office storage facility is \$70.00 per hour. The Office proposes a new fee of \$95.00 per hour for the first hour and \$75.00 for each additional hour.

All of these expedited service fees are surcharges and will be added to the regular charge for the service provided. For example, if an applicant wants an expedited copy of a deposit and it takes the Office one hour to locate the deposit, the \$95.00 charge will be added to the regular search fee for one hour, plus the appropriate copying fee.

C. Reference and Bibliography Search Fee—\$125.00/Hour, \$95.00/Hour

Upon request, the Office's Reference and Bibliography Section will perform an expedited search of its records. Currently, the Office charges \$100.00 for the first hour and \$50.00 for each additional hour for such searches. The proposed fee for performing an expedited search is \$125.00 for the first hour, and \$95.00 per hour or portion of an hour thereafter. These expedited service fees are in addition to the regular charge for a reference search. Charges for providing searches, certifications, or copies that are not made on an expedited basis will remain at the same level.

D. Mask Work Registration—\$75.00

The Office proposes a fee of \$75.00 to recover the full cost to the Office of processing claims in mask works. Mask

works are provided an exclusive commercial right different from copyright as provided in the Semiconductor Chip Protection Act. Claimants seeking mask work protection receive registration and the accompanying legal benefits, including an extended term of protection.

E. Recordation of Notices of Intent to Enforce (NIE)—\$30.00, Each Group of 10 Additional Titles \$10.00

Although the consultants' study established that a higher fee would be necessary to recover costs of recording NIE's, the Office does not propose any amendment since the cost of publicizing the new charge would be more than the Office would recover with a higher fee. Moreover, the vast majority of rightsholders are no

longer eligible to file NIE's with the Office.

List of Subjects

- 37 CFR Part 201
Copyright, General Provisions.
- 37 CFR Part 202
Copyright, Registration.
- 37 CFR Part 203
Freedom of Information Act.
- 37 CFR Part 204
Privacy.
- 37 CFR Part 211
Mask Work Protection, Fees.

In consideration of the foregoing, parts 201, 202, 203, 204, and 211 of 37 CFR

chapter II are amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Sec. 201.32 Fees for Copyright Office special services.

2. Section 201.32 is amended by revising the special services fee chart to read as follows:

* * * * *

Special services ²	Fees
1. Service charge for deposit account overdraft	\$70
2. Service charge for dishonored deposit account replenishment check	\$35
3. Service charge for short fee payment	\$20
4. Appeals	
a. First appeal	\$200
Additional claim in related group	\$20
b. Second appeal	\$500
Additional claim in related group	\$20
5. Secure test processing charge, per hour	\$60
6. Copying charge, first 15 pages, per page	\$1
Each additional page	\$.50
7. Inspection charge	\$65
8. Special handling fee for a claim	\$500
Each additional claim using the same deposit	\$50
9. Special handling for recordation of a document	\$330
10. Full-term storage of deposits	\$365
11. Surcharge for expedited Certifications and Documents Section services:	
a. Additional certificates, per hour	\$75
b. In-process searches, per hour	\$75
c. Copy of assignment, per hour	\$75
d. Certification, per hour	\$75
e. Copy of registered deposit	
First hour	\$95
Each additional hour	\$75
f. Copy of correspondence file	
First hour	\$95
Each additional hour	\$75
12. Surcharge for expedited Reference & Bibliography searches:	
First hour	\$125
Each additional hour	\$95

² On page 15806, in §201.32, the special services fee chart is corrected to read as above. (63 FR 17142 April 8, 1998)

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

Sec. 202.23 [Amended]

4. Section 202.23(e)(1) and (2) are amended by removing "\$270.00" each place it appears and adding in its place "\$365.00."

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

5. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a)(1).

Sec. 203.6 [Amended]

6. Section 203.6(b)(2) is amended by removing "\$7 for up to 15 pages and \$.45 per page over 15." and adding in its place "\$15.00 for up to 15 pages and \$.50 per page over 15."

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

7. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a).

Sec. 204.6 [Amended]

8. Section 204.6(a) is amended by removing "\$7 for up to 15 pages and \$.45 per page over 15." and adding in its place "\$15.00 for up to 15 pages and \$.50 per page over 15."

PART 211—MASK WORK PROTECTION

9. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

Sec. 211.3 [Amended]

10. In Sec. 211.3(a)(1) and (2) remove "\$20.00" each place it appears and add in its place "\$75.00."

11. In Sec. 211.3(a)(7), remove "\$330" and add in its place "\$500.00."

Dated: March 24, 1998.

David O. Carson,
General Counsel.

Approved by:
James H. Billington,
The Librarian of Congress.

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