

LIBRARY OF CONGRESS**Copyright Office****37 CFR Parts 201, 202 and 212****[Docket No. RM 2006-1]****Fees****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing a final rule establishing adjusted fees for its services. The adjusted fees will 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. The proposed fee increase for preregistration has been eliminated, and the proposed increase for group registration of photographs has been reduced to the fee for basic registration. Adjusted fees will be effective July 1, 2006. This final rule assumes that no legislative action will take place before July 1, 2006.

DATES: *Effective Date:* July 1, 2006.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**Background**

This final rule adjusts Copyright Office fees in accordance with the applicable provisions of title 17, United States Code, and the Technical Amendments Act, Public Law 105-80, 111 Stat. 1529 (1997), codified as 17 U.S.C. 708(b).

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 Office submitted its cost study and proposed fee schedule to Congress on March 1, 2006.

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.

On March 28, 2006, the Copyright Office published a notice of proposed rulemaking informing the public of the proposed adjusted statutory and discretionary fees. 71 FR 15368 (March 28, 2006). The notice explained that most statutory fees were to be increased based on the 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, it was proposed that a number of the statutory fees be adjusted to achieve full cost recovery, e.g., the fees for filing a supplemental registration, 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 would be adjusted only to account for inflation since the last fee adjustment in 2002.

The Office proposed that the basic registration filing fee be increased from \$30 to \$45. The \$30 fee was established in 1999, and was not raised in 2002. The proposed increase did not reflect full cost recovery for the service provided, nor did 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 proposed setting the fee for the basic registration at a level to allow reasonable cost recovery but not so high as to discourage copyright owners from filing their claims with the Office.

The notice of proposed rulemaking provided that the discretionary fees were generally adjusted to reflect increased costs to the Office and account for the effect of inflation. In those cases where the service benefits only or primarily the requester of the

service, the fee was generally set at full cost recovery. These fees included secure test processing and expedited searches. Fees for first and second reconsideration of refusal to register a claim were also increased, but not at the level of full cost recovery because 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.

The notice of proposed rulemaking also discussed special circumstances in six areas. The topics included the decision to eliminate GATT Group registration; the decision to apply the same fee for recording Notices of Intent to Enforce (NIE's) as applies to recordation of documents; the decision to charge \$100 for the order of a written search estimate by the Reference & Bibliography Section, with the \$100 to be applied to the total fee charged if the search is ordered; establishment of a handling fee for an extra deposit copy for certification to be the same as the basic registration fee; establishment of a single fee to cover both the search and the written report of an expedited Reference & Bibliography Search and Report; and the establishment of new copying fees which included a new minimum fee of \$6.00 for photocopying of documents.

Comments

The Office received thirty-two comments, the vast majority of which came from photographers and organizations representing photographers. The issues raised by those who submitted comments included the following:

- *Opposition to raising the basic registration fee from \$30 to \$45.* The basic registration fee of \$30 was set in 1999 when it was increased by 50%, from \$20 to \$30. Although the Copyright Office made no further adjustment to the basic registration fee in 2002 when a number of other Copyright Office fees were adjusted, the commentators objected to the proposed increase in the basic registration fee. They maintained that the \$45 fee was too high for creators running small businesses, and a few comments suggested that the higher fee was being proposed to fund reengineering of business processes in the Copyright Office.

- *Opposition to raising the fee for group registration of photographs.* Commentators objected to raising the fee for group registration of photographs to \$75, asserting that the new fee represented a 150% increase from the current \$30 fee. One commentator

suggested that the new fee would create a "Berlin wall" between photographers and the Copyright Office.

- *Opposition to raising the preregistration fee.* Commentators objected to raising the preregistration fee from \$100 to \$150. It was argued that the \$100 fee was put into place approximately 6 months ago, and since the registration system is electronic, costs should drop rather than increase.

- *Opposition to increasing search fees from \$75 to \$150 an hour.*

Photographers objected to increasing search fees of the Reference & Bibliography Section on the grounds that it would negatively impact policies with respect to Orphan Works.

Final Regulation

A. Adoption of New Fees for Registration, Recordation, and Other Required Services

With the exception of the proposed new fees for preregistration and group registration of photographs, the Copyright Office has decided to adopt the adjusted fees as proposed. The basic registration fee of \$45 is less than the actual cost of providing the service. The Copyright Office is currently collecting 56.7% of its total expenditures from fees. This shortfall is largely due to the reality that the current \$30 fee does not come close to recovering costs of current operations. While it would have been preferable to continue to operate under the current cost schedule and await a new assessment under the reengineered processes, the need to raise fees to meet current costs during the reengineering period could not be overlooked. Even so, the \$45 fee does not recover full costs, it merely brings the Copyright Office closer to its historical range of cost recovery. Moreover, comments suggesting that the proposed increase is intended to cover the cost of reengineering of Copyright Office business processes are incorrect since no costs related to this task were included in the cost study. Costs associated with the reengineered processes will be the focus of a separate cost study that the Office will undertake once these processes are operational and, at that time, the Office anticipates establishing a differential fee schedule with lower filing fees for on-line registration than for the current paper-based registration, to reflect the efficiencies of the new reengineered processes.

Search fees will also be increased to recover more of the costs of the service. The current \$75 rate covers only a relatively small fraction of the actual

cost of conducting the searches; and even by doubling the fee to \$150, the Office will not recover a substantial portion of the costs of this service. While the increase may result in fewer search requests, as the comments suggest, the service primarily benefits those who seek it and they should bear the brunt of the costs. Moreover, there are alternative choices in the marketplace. Private businesses offer this type of search service in the private sector at competitive rates.

B. Fee for Preregistration To Remain at \$100

Approximately six months ago the Copyright Office established a system of preregistration pursuant to the Artists Rights and Theft Protection Act of 2005. Lacking experience with registration of claims in the area, the Office set up an electronic form of registration and set the fee at \$100, which was the Office's best estimate of its likely costs. Preregistration, however, required far more correspondence than had been anticipated, raising the costs beyond the \$100 estimate. Thus, based upon the cost study, the Copyright Office proposed raising the fee to \$150. In light of the strong opposition to this fee increase voiced by commentators, the Copyright Office took a second look at the costs of processing a preregistration claim and found that the rate of correspondence concerning preregistration has recently fallen. As a result, the Copyright Office has decided to retain the current \$100 fee but will continue to monitor the Office's costs of providing this service.

C. Fee for Group Registration of Photographs

The Office proposed raising the fee for group registration of photographs from the current \$30 to \$75 to cover its substantially higher costs associated with processing claims in groups of photographs. Photographers responded by protesting strongly that they would be unable to bear the additional costs. The Office acknowledges that when it offered the group registration of photographs option in 2001, it intentionally set the fee at the basic registration fee. Photographers are an important part of the copyright community, and in light of the hardship which might arise as a result of raising the fee to \$75 and the likelihood that the fee increase would result in reduced deposits of photographs, the Copyright Office has decided to continue its current practice of charging only the basic registration fee (\$45 as of July 1)

for group registration of photographs as an incentive to photographers to register their works.

D. Technical Amendments Bringing All Fee Provisions Within § 201.3

In order to bring all fees within § 201.3 of the regulations, the Copyright Office is amending various regulations which separately specify fees. These regulations include Notice to Libraries and Archives, Notice of Intention to Enforce (NIE), Corrected Notice of Intention to Enforce, registration of restored works, preregistration of certain unpublished works, and registration of vessel hulls. In addition, provisions establishing group registration of claims in restored works are eliminated.

E. Effective Date

Congress has 120 days from March 1, 2006, to review the statutory fees submitted to it, codified in §§ 201.3(c) and (e)(1). If no legislation is enacted barring adoption of these fees, the proposed fee schedule for registration, recordation, and other related services will be adopted, effective July 1, 2006. The remaining fees, which are not subject to the Congressional review process set forth in 17 U.S.C. 708(b)(5), shall become effective on July 1, 2006.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Registration.

37 CFR Part 212

Design, Fees, Registration, Vessel hulls.

Final Rule

■ In consideration of the foregoing, parts 201, 202, and 212 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.

■ 2. Section 201.3(c), (d) and (e) are revised to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

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(c) Registration, recordation and related service fees. The Copyright Office has established the following fees for these services:

Registration, recordation and rated services	Fees
(1) Registration of a basic claim in an original work of authorship: Forms TX, SE, PA, VA (including Short Forms), and Form SR	\$45
(2) Registration of a claim in a group of contributions to 75 periodicals (GR/CP)	45
(3) Registration of a renewal claim (Form RE):	
Claim without Addendum	75
Addendum	220
(4) Registration of a claim in a mask work (Form MW)	95
(5) Registration of a claim in a group of serials (Form SE/Group) [per issue, with minimum 2 issues]	25
(6) Registration of a claim in a group of daily newspapers and 45 qualified newsletters (Form G/DN)	70
(7) Registration of a claim in a restored copyright (Form GATT)	45
(8) Registration of a group of published photographs	45
(9) Preregistration of certain unpublished works	100
(10) Registration of a correction or amplification to a claim 150 (Form CA)	115
(11) Providing an additional certificate of registration	40
(12) Certification of other Copyright Office records (per hour)	150
(13) Search—report prepared from official records (per hour)	150
Estimate of search fee	100
(14) Location of Copyright Office records (per hour)	150
Location of in-process materials (per hour)	150
(15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title)	95
Additional titles (per group of 10 titles)	25
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12
(17) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under §512(c)(2)	80
(18) Issuance of a receipt for a §407 deposit	20
(19) Registration of a claim in a vessel hull	200

(d) *Special Service Fees.* The Copyright Office has established the following fees for special services:

Special services	Fees
(1) Service charge for deposit account overdraft	\$150
(2) Service charge for dishonored deposit account replenishment check	75
(3) Appeals:	
(i) First appeal	250
Additional claim in related group	25
(ii) Second appeal	500
Additional claim in related group	25
(4) Secure test processing charge, per hour	150
(5) Copying of Copyright Office Records by staff:	
Photocopy (b&w) (per page, minimum \$6)	0.50
Photocopy (color) (per page, minimum \$6)	1.50
Photograph (Polaroid)	15
Photograph (digital)	45
Slide	3
Audiocassette (first 30 minutes)	75
Additional 15 minute increments	20
Videocassette (first 30 minutes)	75
Additional 15 minute increments	25
CD or DVD	50
Zip or floppy disk	100
(6) Special handling fee for a claim	685
Each additional claim using the same deposit	50
(7) Special handling fee for recordation of a document	435
(8) Handling fee of extra deposit copy for certification	45
(9) Full-term retention of a published deposit	425
(10) Expedited Reference and Bibliography search and report	400/hr
(11) Expedited Certification & Documents services (surcharge, per hour)	240
(12) Notice to Libraries and Archives	50
Each additional title	20
(13) Use of COINS terminal in LM-B14 (per hour)	25
(14) Fed Ex Service	35
(15) Delivery of documents via facsimile (per page, 7 page maximum)	1

(e) *Licensing Division service fees.* The Copyright Office has established the following fees for certain services performed by the Licensing Division:

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

■ 3. Amend § 201.33 by revising paragraph (e)(1) to read as follows:

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

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(e) Fee—(1) *Amount.* The filing fee for recording Notices of Intent to Enforce is prescribed in § 201.3(c).

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■ 4. Amend § 201.34 by revising paragraph (e)(1) to read as follows:

§ 201.34 Procedures for filing Correction Notices of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.

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(e) Fee—(1) *Amount.* The filing fee for recording Correction NIEs is prescribed in § 201.3(c).

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■ 5. Amend § 201.39 by revising paragraph (g)(2) to read as follows:

§ 201.39 Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price.

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(g) * * *

(2) *Amount.* The filing fee for recording Notice to Libraries and Archives is prescribed in § 201.3(d).

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PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

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

Authority: 17 U.S.C. 408, 702.

■ 7. Amend § 202.12 as follows:

■ a. by revising paragraphs (c)(2) and (c)(3)(i)

■ b. by removing paragraph (c)(5).

The additions and revisions to § 202.12 read as follows:

§ 202.12 Restored Copyrights

* * * * *

(c) * * *

(2) GATT form. Application for registration for works restored to copyright protection under URAA

should be made on Form GATT.

Application for registration for a group of works published under a single series title and published within the same calendar year should also be made on Form GATT. The GATT form may be obtained by writing or calling the Copyright Office Hotline at (202) 707-9100. In addition, legible photocopies of this form are acceptable if reproduced on good quality 8½ by 11 inch white paper and printed head to head so that page two is printed on the back of page one.

(3) Fee—(i) *Amount.* The filing fee for registering a copyright claim in a restored work is prescribed in § 201.3(c).

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■ 8. Amend § 202.16 by revising paragraph (c)(5)(i) to read as follows:

§ 202.16 Preregistration of copyrights.

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(c) * * *

(5) * * *

(i) *Amount.* The filing fee for preregistration is prescribed in § 201.3(c).

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PART 212—PROTECTION OF VESSEL HULL DESIGNS

■ 9. The authority citation for Part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

■ 10. Revise § 212.2 to read as follows:

§ 212.2 Fees.

Services related to registration of original designs of vessel hulls are subject to fees prescribed in §§ 201.3(c) and (d).

Dated: May 24, 2006.

Marybeth Peters,
Register of Copyrights.

Approved by:

James H. Billington,
The Librarian of Congress.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[EPA-HQ-OAR-2004-0491; FRL-8176-3]

RIN 2060-AN60

PM_{2.5} De Minimis Emission Levels for General Conformity Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule amendments to the PM_{2.5} De Minimis Emission Levels for General Conformity Applicability, published in the **Federal Register** on April 5, 2006. We stated in the direct final rule amendments that if we received adverse comment by May 5, 2006, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule amendments. We will address those comments in a subsequent final action based on the parallel proposal also published on April 5, 2006. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of June 1, 2006, EPA withdraws the direct final rule amendments published on April 5, 2006 (71 FR 17003).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0491. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at