



May 14, 2012

Library of Congress
Copyright Office
[Docket No. 2012-1]
Copyright Office Fees

Comments by the Copyright Alliance

I. Introduction and Background

The Copyright Alliance welcomes this opportunity to comment on the Copyright Office's Notice of Proposed Rulemaking (NPRM) proposing to adopt new fees for the registration of claims and other important services that the Office provides.

The Copyright Alliance is a non-profit public interest and educational organization that is supported by more than 40 entities comprised of individual artists and creators, as well as the associations, guilds, and corporations that invest in and support them. Besides these institutional members, we represent more than 7,000 individual "One Voice Artist Advocates" who give their personal time and creativity to support our work. The Copyright Alliance is committed to promoting the cultural and economic benefits of copyright, providing information and resources on the contributions of copyright, and upholding the contributions of copyright to the fiscal health of the nation and for the good of creators, owners, and consumers around the world. Among other principles, we seek to promote appropriate copyright protection and enforcement to encourage the creation and lawful distribution of works, with fair compensation to the authors of creative works. While many of the entities we represent are small businesses and individual creators, all who participate in the copyright ecosystem have an interest in effective mechanisms for registering and enforcing copyrights.

The Copyright Alliance has significant concerns regarding the substantial fee increases proposed in the NPRM for registering both individual works and group claims. If adopted, the increases would be the largest—in both dollar and percentage amounts—ever implemented by the Copyright Office. The increased fees would impose significant and immediate financial hardships on a wide range of copyright owners, and would provide substantial financial disincentives for registration to individual and small-business copyright owners. For these and other copyright owners who must make large numbers of registrations each year, the proposed increases would essentially double their copyright costs. And, because the NPRM proposes for the increased fees to be

implemented starting this October, these increases will drastically impact current-year budgets without warning.

The Copyright Alliance recognizes the Copyright Office's need to recover a significant portion of the costs it incurs. The Copyright Alliance believes that the Copyright Office can and should consider a number of modifications or alternatives to the proposed increases that would balance more appropriately the Office's cost-recovery interests with the important public interests in providing incentives for the registration and deposit of copyrighted works:

- Any fee increase should be reasonable and incremental in comparison to the fee charged in the prior year. Substantial fee increases should be phased in over time.
- The NPRM proposes a lower fee increase for “single authors,” but only those whose works are *not* registered as works made for hire. The Copyright Office should re-define eligibility for the lower fee so that small businesses operated by individual artists for tax, liability, or other business reasons would also be eligible for the lower fee. The lower fee also should be available to single authors or small business who commission works made for hire.
- Registration fees on a per-work (or per-group registration) basis should be reduced for copyright owners who submit large numbers of registrations.
- Work with third parties to create a registration API for ingesting large numbers of registrations and deposits.

Because the membership of the Copyright Alliance is broad and diverse, we expect that individual members may submit additional comments elaborating on particular challenges and concerns faced by different segments of the creative community.¹

II. Copyright Owners and the Public Have Substantial Interests in Incentives for Registration and Deposit

The fees charged for registering copyrighted works implicate public as well as private interests. The NPRM primarily justifies the increased fees on the ground that the underlying services “benefit only or primarily the user of that service.” 77 Fed. Reg. 18742 (Mar. 28, 2012). Registration and deposit, however, benefit more than just the particular owners who register their copyrights. While the owner of a copyrighted work obtains the most immediate benefit from any particular registration, a system that promotes readily accessible—and widely utilized—registration and deposit also furthers important public interests.

¹ In addition, some members of the Copyright Alliance take no position on the NPRM.

In the first place, providing incentives to registration and deposit fortifies the Library of Congress's storehouse of the nation's creative works. As a general rule, copyright owners must deposit complete copies (or phonorecords) of the best edition of their works at or around the time of registration. These copies and phonorecords thereafter are available for the use and disposition of the Library of Congress. *See* 17 U.S.C. § 407. Hence, registration and deposit help to increase the public record of copyrighted works.

Moreover, an accessible and utilized registration system facilitates the dissemination of copyrighted works. An organized database of copyrighted works and their registered owner makes it easier to match people who want to license copyrighted works with the people who own them. As the NPRM recognizes, "users of copyrighted works rely on the Copyright Office registration records to identify copyright owners when they require licenses." 77 Fed. Reg. at 18743. Conversely, when owners do not register their works, the system for the lawful licensing and exploitation of copyrighted works is impeded, as the Copyright Office has discussed in addressing the "orphan works" problem. *See Report on Orphan Works: A Report of the Register of Copyrights* at 15-17 (Jan. 2006). Congress, in the Copyright Act, has provided significant incentives to register, including making registration (or preregistration) in general a prerequisite to enforcing the copyright in court, 17 U.S.C. § 411, and conditioning the availability of statutory damages and attorney's fees on registration. *Id.* § 412.

In light of the significant public interests served by encouraging registration, the process of setting fees has always taken these interests into account, as well as the need for the Copyright Office to recover a portion of its costs. For example, in 1989, Congress by statute increased the basic registration fee by \$10. In the process of considering that legislation, the House Judiciary Committee rejected an amendment that would have increased the fee by \$20, which would have more closely reflected the actual costs of filing incurred by the Copyright Office. *See* H.R. Rep. No. 101-279 at 4, 101st Cong., 1st Sess. (Oct. 13, 1989).

III. General Issues

The registration fee increases proposed in the NPRM would provide significant disincentives to registration and deposit. The NPRM proposes to increase the basic fee for registering an original work of authorship electronically from \$35 to \$65. If adopted, this would be the largest percentage increase ever imposed by the Copyright Office. It would be the largest increase for basic registration in absolute dollars ever. The NPRM proposes even greater absolute dollar increases for paper filings and for group registrations of periodicals and serial daily newspapers or qualified newsletters.

The magnitude of the fee increases would disproportionately impact individuals and small businesses with constrained budgets. Illustrators and graphic artists, for example, may create dozens (or more) copyrighted revisions of their work in the process

of completing a final product for commercial dissemination.² In light of the distinction between “published” and “unpublished” works, the many different versions that an artist creates along the way may not be eligible for group registration. The artist thus faces the prospect of having to make numerous individual registrations for her or his many creations, or risk being without legal recourse in the event those works are later used without authorization. The cost of registering multiple published and unpublished works already is substantial under the current fee schedule, which explains in part why many members of the creative community (including photographers, illustrators, and graphic artists) do not register their works. For example, a 2012 survey of members of the American Society of Media Photographers (ASMP) found that 57% of respondents had registered their works with the Copyright Office, while 43% had not. Of the 57% who had registered their works, nearly 70% said that the general fee increase for registering basic claims (a \$30 increase) would likely cause them to decrease their registrations; of this same group, more than 40% said that their registrations likely would decrease even at the lower fee increase that the NPRM proposes for “single authors” (a \$10 increase). ASMP’s survey results confirm what basic economics (and common sense) counsel: nearly doubling the cost of registration will provide significant disincentives to registration among individual and small business copyright owners. Given that works created by individuals and small businesses disproportionately account for orphan works, providing disincentives to the substantial number of such owners who do register and deposit their works (and raising the bar for the likewise substantial number who do not) is likely to exacerbate the orphan works problem.

The proposed increases for group registration fees also are substantial. For example, the NPRM proposes to increase the fee for bulk registration of newspaper daily issues by nearly 88%, from \$80 to \$150. The Newspaper Association of America (NAA) estimates that this and other proposed increases in the filing fees for newspapers could cost its members an aggregate of more than \$1 million annually, over and above the existing fees these members pay to register their works. NAA is a strong advocate for the Copyright Office to adopt technological solutions that will make registration of newspapers more efficient. To aid this effort, NAA members already are involved in a pilot program to enable the Copyright Office to receive individual newspaper issues in PDF format, which is more cost-effective and less labor-intensive than submission via microfilm. NAA believes that innovative technological solutions such as these, once fully implemented, will save the Copyright Office time and money, and will greatly reduce the need for significant registration fee increases.

The proposed fee increases would double the copyright expenditures of many other copyright owners, including owners of sound recording or musical compositions who register large numbers of separately copyrighted works each year. The financial hardship imposed on these and other copyright owners would be exacerbated by the very

² By way of first-hand example, the artist who worked on the Copyright Alliance’s recent logo design submitted several rounds of designs, containing more than 40 different illustrations. An individual artist, of course, will work on many such projects over the course of a single year.

narrow time-frame within which copyright owners would have to adapt to the increases. The Copyright Office released the NPRM on March 21, 2012, and proposes to implement the new fees with the beginning of the new fiscal year, October 1, 2012. 77 Fed. Reg. at 18748. Many copyright owners already have budgeted their copyright costs for the current year, or are setting budgets for these costs for next year. An immediate, almost doubling of the costs of copyright registration will cause severe budgetary and fiscal constraints for copyright owners (many of whom already face significant challenges in the current economic climate) and will do so without warning or time to modify current-year budgets.

As noted, the Copyright Alliance recognizes that the Copyright Office itself faces budgetary challenges and constraints. We respectfully submit that the Copyright Office should consider several modifications or alternatives to the current NPRM, to achieve greater balance among the various interests implicated by the proposed fee increase:

- ***Fee increases should be moderate and gradual; large-scale fee increases should be phased in over time.*** Large percentage or large dollar fee increases in any particular year can wreak havoc on the budgets of already financially constrained copyright owners. The Copyright Alliance urges the Copyright Office to limit any year-over-year fee increase to a modest dollar amount and percentage increase. If the Copyright Office concludes that significant fee increases are necessary to achieve longer-term cost recovery, the Copyright Alliance urges the Copyright Office to implement such increases over a multi-year period.

- ***The Copyright Office should broaden the exception for “single authors” to works made for hire.*** The NPRM recognizes the impact of the proposed fee increases on small copyright owners. To ameliorate that impact, the NPRM proposes a lower (though still sizeable) fee increase for what the NPRM calls “single authors.” The lower registration fee, however, would be available only “to a single author who is also the claimant for the online filing of a claim in a single work *that is not a work made for hire[.]*” 77 Fed. Reg. at 18743 (emphasis added).

Excluding the reduced fees for small copyright owners who either register their works through corporate entities, or who register their creations as works made for hire, is inequitable and unfair to many individuals and small businesses. Works made for hire are not owned exclusively by large companies. There are legitimate reasons why a rights holder would register a work through a corporate entity rather than as an individual author, including tax and liability concerns. Similarly, small business and individual copyright owners (such as independent visual artists, some songwriters, small recording labels, independent filmmakers, and educational publishers) regularly register works made for hire. The lower fee for “single authors” should be available to both of these groups. By excluding these groups from eligibility for the lower fee, the Copyright Office appears to be expressing a value judgment about works made for hire that is at odds with important policy interests served by providing protection for works made for hire. These important policy interests include facilitating the licensing and use of copyrighted works and reducing the incidence of orphan works.

The Copyright Office should re-define eligibility for the lower fee to include (1) small businesses operated by individual artists for tax, liability, or other business reasons, regardless whether those businesses register works created by their individual owners or works commissioned from others for a project; and (2) single authors or small business who commission works made for hire.

- ***Reduced fees for large volumes of registrations by single owners.*** Many copyright owners—including newspapers, visual artists, and owners of sound recordings or musical compositions—submit large numbers of separate copyright registrations concurrently. These owners already face substantial copyright costs associated with registering their works. Nearly doubling the fees for such registrations imposes significant additional costs. Given that the Copyright Office likely will process large-volume registrations by the same copyright owner more efficiently than if the Office was processing the same number of registrations from different owners, the doubling of fees appears to be disproportionate to the services the Copyright Office must expend to register such works. We encourage the Copyright Office to propose a fee schedule that provides an appropriate measure of discount for such large-volume filers.

- ***Work with third parties to create a registration API.*** For those copyright owners who submit large numbers of separate copyright registrations at the same time, having an API that works with the Copyright Office's server in the submission and uploading process would reduce the administrative costs on the copyright owners side and at the same time reduce the administration costs to the Copyright Office in ingesting and identifying large numbers of applications and registration deposits. Third party technology companies working with the Copyright Office may be able to develop solutions that could ease the financial burden on all parties.

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We thank the Copyright Office for the opportunity to comment on this important NPRM.

Sincerely,

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Copyright Alliance