

# **Analysis and Proposed Copyright Fee Adjustments to Go into Effect on or about July 1, 2007**

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**Submitted to Congress by  
Marybeth Peters, Register of Copyrights**

**February 21, 2007**



Library of Congress  
U.S. Copyright Office  
101 Independence Avenue SE  
Washington, DC 20559-6000



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

February 16, 2007

Dear Mr. President:

I am pleased to present a schedule of three proposed Copyright Office fees and the accompanying analysis as required by the Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997). These fees will create incentives for use of our upcoming electronic registration service and will lead to more complete records concerning works that have been registered in the Copyright Office.

As described in the analysis, the Office has followed the steps outlined in the statute and proposes to institute the new copyright fees on or about July 1, 2007. Under the law, the Register may institute the new fees 120 days after the schedule is submitted to Congress, unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. In completing this analysis, the Office conducted a study of costs in providing services and considered the effect of a fee adjustment on users of our services, the effect on overall receipts, and the objectives of the copyright system. Additionally, and importantly, these fees are intended to provide an important incentive (a significantly lower fee) for those who submit their registration materials electronically.

Thank you for your consideration of this proposed fee schedule.

Respectfully,

A handwritten signature in cursive script that reads "Marybeth Peters".

Marybeth Peters  
Register of Copyrights

The Honorable Richard Cheney  
President of the Senate  
Washington, D.C. 20510



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Dear Madame Speaker:

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As described in the analysis, the Office has followed the steps outlined in the statute and proposes to institute the new copyright fees on or about July 1, 2007. Under the law, the Register may institute the new fees 120 days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule. In completing this analysis, the Office conducted a study of costs in providing services and considered other pertinent information, including the effect of a fee adjustment on usership, overall receipts, and the objectives of the copyright system.

Thank you for your consideration of this proposed fee schedule. Please let me know if you require any additional information.

Respectfully,

Marybeth Peters  
Register of Copyrights

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

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# ANALYSIS AND PROPOSED COPYRIGHT FEE SCHEDULE

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## Introduction

Six years ago the Copyright Office began a reengineering initiative aimed at better public service. A key component of that initiative was online service. The goal is more efficient processing of materials and more timely delivery of public services. Timely registration of copyright claims submitted by authors and publishers is critical to their ability to protect their works, especially in today's digital, networked society.

The Office registers over a million works each year; more than 600,000 applications, many containing claims in hundreds of works, are submitted. Our current processes have been in place for almost half a century and processing time for a registration can take several months with handling by as many as 24 employees. Our new system, eCO – electronic Copyright Office, will debut early in July of this year. That system will allow registration to be completed in two to three weeks; only two or three staff will be involved in a particular registration. Records of registration will be available to the public as soon as the registration is completed; today, that record may take six months to be made available online.

The Office, users of our services and the public will benefit most if large numbers of applicants use the new electronic service. The experience of the Patent and Trademark Office taught us that users are slow to adopt a new system; they find it easier to continue to do things the way they always have been done. A significant reduction in the filing fee will lead to early adoption of the system by many, if not most, applicants.

The proposed fee adjustments support the transition to electronic filing and processing of claims and were anticipated in our 2006 fee schedule and report to Congress which resulted in a major increase in our fees in July 2006. That report contained the following statement:

*The Copyright Office's electronic filing system is scheduled to become universally available next year. The Office anticipates setting new fees at that time. The Office anticipates charging a lesser fee for electronic filers and a greater fee for those who continue to file paper applications and payments. The dual fee will not only reflect the reduced cost of processing electronic claims, but will provide an incentive to potential electronic filers.<sup>1</sup>*

In addition to the incentive mentioned above, electronic filings will be processed in fewer steps and by fewer staff at a lower cost to the Office. As mentioned above, the system will greatly improve the quality and timeliness of the Office's service to the public. Registrations will be

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<sup>1</sup> *Analysis and Proposed Copyright Fee Schedule to Go into Effect July 1, 2006*, submitted to Congress by Marybeth Peters, Register of Copyrights, March 1, 2006.

issued in a substantially shorter time frame; simultaneously a searchable record of the facts pertaining to the registration will be uploaded to the website, and a digitally produced certificate will be issued. Our proposed fee for those who file electronically is \$35 per claim.

The Office also proposes to establish a new registration option, allowing a registration pertaining to a collection of individual works to include the titles of the individual works. Thus, the titles of the contents of a collection will be indexed in the registration record as access terms. This service which will provide a more comprehensive and more useful public record has been high on the wish list of authors and publishers, as well as members of the public and search services. A robust database of registered works, with contents titles, serves the interests of both copyright owners and users of copyrighted works.

The Office cannot require all filers to use the electronic system; therefore, the lower fee is necessary to provide an incentive to use the system. Many people will continue to submit applications, fees, and copies the traditional way (paper filings). However, the Office will be converting these paper applications to digital form upon arrival in the Office. Digital conversion, along with manual processing of fees and the handling of physical copies (books, CDs, DVDs) will be costly. Consequently, the current \$45 fee, established last July, will be retained for paper filings, reflecting the fact that they do not represent a savings to the Office.

FY 2008 will be the first full fiscal year working within the new system. Using data from that year, the Office will prepare a cost study to determine the cost of providing its various services in the new environment. Based on that information and following the required process for adjusting fees, the Office will consider whether fees need to be adjusted in FY 2009 to reflect the new cost of providing services in FY 2009. If they do, a new fee schedule will be sent to Congress with the required justification.

For the reasons and justifications stated above, the Copyright Office proposes the following changes to its fee structure. The filing fee for basic registrations filed electronically will be implemented on or about July 1, 2007 to coincide with its transition to new, electronic processes. The fees for listing contents titles in collections will be implemented when system modifications are completed, between October 1, 2007 and January 1, 2008.

Filing fee for basic registrations for copyright claims filed electronically:  
\$ 35

Fee for listing titles of individual works in an application for a collection filed electronically:  
\$ 1 each

Fee for listing titles of individual works in an application for a collection filed on paper:  
\$ 3 each

## **I. Background on adjusting Copyright Office fees**

### **A. Legal basis for adjusting fees**

Copyright Office fees for services are adjusted by regulation. The procedure for adjusting fees is set out in Section 708 (b) of the copyright law (17 USC §708(b)), as follows:

- (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. This study should also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.
- (2) On the basis of the study, and subject to congressional approval, the Register is authorized to fix fees at a level not more than that necessary to recover reasonable costs incurred for the services described plus a reasonable adjustment for inflation.
- (3) Fees established should also be fair and equitable and give due consideration to the objectives of the copyright system.
- (4) The Register must then submit a proposed fee schedule with the accompanying economic analysis to Congress for its approval. The Register may institute the new fees 120-days after the schedule is submitted to Congress unless Congress enacts a law within the 120-day period stating that it does not approve the schedule.<sup>2</sup>

### **B. Overview of the Copyright Office budget**

Copyright Office basic funds support activities associated with administering the copyright law, including registration of claims, recordation of documents, and performance of related services. The Office has separate statutory licensing responsibilities and copyright royalty funds submitted as part of those licenses that are not affected by the current proposal.

The Copyright Office net appropriation represents funding provided by Congress rather than through fees. The net appropriation supports policy costs and the cost of obtaining copies of copyrighted works needed for the Library's collections, which are unrelated to fee services, as

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<sup>2</sup> Technical Amendments Act, Pub. L. No. 105-80, 111 Stat. 1529 (1997). It also contained a provision § 708(b)(4) regarding rounding off fees.



well as those costs not fully recovered through fees. Approximately 57 percent of the Copyright Office's basic appropriation for FY 2006 was based on offsetting collections authority from yearly user fees and temporary authority to use fees collected in the no-year account.

The Copyright Office budget is within the Library of Congress overall budget, although there are shared resources stemming from budgeted expenditures. The Library of Congress assumes certain intra-entity expenses supporting the Copyright Office in the Offices of Human Resource Services, Financial Services, Integrated Support Services, and Information and Technology Services. The Copyright Office annually provides the Library of Congress with very valuable materials, including books, serials, maps, music, and motion pictures, for the Library's collections or use in its exchange programs. The value of these deposits is increasing and was estimated at more than \$41 million in FY 2006.

#### **C. Effect of the fee increases implemented July 1, 2006**

Most Copyright Office fees were adjusted on July 1, 2006, following the tacit approval of Congress regarding the fee schedule and accompanying economic analysis sent to both houses on March 1, 2006. The new fees have been successful in bringing in receipts more than 23% higher than a year ago, despite the fact that demand for services has dropped somewhat. For example, basic registration filings have declined 5.6%.

#### **D. Development of a cost study**

The cost study for this proposed fee schedule was developed by the Copyright Office based on a model created as part of its business process reengineering (BPR) initiative, with adjustments to omit non-fee services and include some fee services that were not included in the BPR study. The cost analysis used the activity based costing methodology approved in Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, No. 4, published by the Office of Management and Budget on July 31, 1995. Under this approach, resource costs are assigned to activities, and activities are assigned to specified services. Most Copyright Office activity costs were associated directly with one or more fee services. Certain general and administrative costs related to fee services were treated as indirect costs and were allocated proportionately across all fee services; others to the specific service they supported.

The study omits purely policy and public information costs, i.e., costs related to legislative, regulatory, judicial, and international responsibilities, which do not relate directly to any fee service. Excluded policy expenses include certain staff from the Office of the General Counsel and the Public Information Office, the entire Publications Section, and all Policy and International Affairs staff. The Office also excluded the costs of the Copyright Acquisitions Division, whose primary responsibility is securing copies of copyrighted works published in the

United States that have not been registered or voluntarily deposited for the use of the Library of Congress, and certain overhead expenses associated with these activities.

The full cost to the federal government would include inter-entity costs that are funded by other federal agencies (e.g., building services performed by the Architect of the Capitol and litigation support by the Department of Justice.) These inter-entity costs are not reported to the Copyright Office. They are not compensated and are not included in the cost study. Full costs also include intra-entity costs, i.e., equipment and services that are provided by the Library of Congress. Only the costs reimbursed under the Copyright basic appropriation are included in the cost study. Those plus the direct costs to the Copyright Office are used as the basis for determining the cost of services.

Cost studies of this type are retrospective, using actual data from a fiscal year that has concluded. Costing for the proposed fees had to be done prospectively, as an adjunct to the cost study, because the specific services for which fees are proposed have not been offered in the past. However, the Office was able to use findings directly from the prior cost study because the cost of most of the activities required to perform these services had already been determined. Experience with a small-scale testbed for electronic registration provided additional information for projecting costs.

## **II. Evaluation of Cost Study Results and Other Congressional Criteria**

### **A. Rationale for the proposed fee adjustments**

1. Reduced fee for electronic filing of basic registrations: \$35

When the Copyright Office transitions to new processes for many of the services it offers, registration will be the service most heavily impacted. For the first time, electronic filing will be made available to the general public. The service will be accessed via the Office's website. Once a customer establishes a user account, filing will be significantly simplified. Processing of electronic claims within the Office will be equally streamlined.

Processing of paper claims will also be changed. These claims will be converted to electronic form by scanning the applications thereby converting the information to digital form. Electronic processing will ensue after the initiation of this eCO record, with the exception of fee processing.

Neither type of processing is exactly comparable to the current system. The Office does not seek to adjust the fee for paper filings, however, until such time as the new processing has been in effect for sufficient time to perform a cost study based on its actual resource and activity

costs. For the electronic filings, however, the Office believes the anticipated cost savings and the importance of providing an incentive for applicants to file electronically justify a lower fee.

The Office has for several years made a small proportion of registrations electronically through a testbed system available only to test partners and not to the general public. The testbed has demonstrated cost avoidance that more than justifies a lower fee. The electronic claim does not require fee handling and processing, nor does the information in the electronic application require digitization by optical character recognition, which requires review and editing by Office staff, or by manual data entry performed fully by staff. The claim filed electronically arrives at the registration specialist's workstation without mail processing and transport by other staff.

Some electronic claims will be accompanied by an electronic deposit. In those cases, the accessioning and security tagging undertaken with physical deposits is avoided. Post registration, no staff are required to move the deposit to a storage location and note that location in the record. These claims, the Office's cost study has shown, may cost as little as half the cost of a paper claim registered in the current system.

In many cases, the deposit will be sent in physical form, rather than electronically. There are two reasons for this:

- (1) the Library's regulation on "best edition" requires that many published deposits be sent in the form most suitable for its collections, often the physical form, and
- (2) the eCO system will accept deposits in most of the common file formats, but some deposits may not exist in those formats or may be too large to be accommodated by the system.

The Office has no experience with the partial electronic claim, but can again identify activities that can be avoided and that represent corresponding cost avoidance. In cases where the deposit will be sent in physical form, the costs are estimated to be about 70% of the current cost of processing a paper claim.

The Office does not seek to establish two separate fees for full and partial electronic filing. The filer often will not have a choice of filing an electronic or physical deposit. Setting a lower fee for those who can send an electronic deposit with their application would not be fair. Neither does the Office consider that it needs to provide additional incentive to applicants to send an electronic deposit. The obvious benefit of establishing an earlier effective date of registration by filing the deposit the same day as the application and fee and the advantage of processing within the Office without having to wait for the deposit, as well as the savings over mailing a deposit, should be incentive enough. Instead, the Office wishes to reward electronic filers equally for participating in the electronic filing system, thus saving processing steps in the Office, whether the deposit is electronic or physical.

2. Fee for listing contents titles of individual works in collections: \$1 per title for electronic claims; \$3 per title for paper claims

The copyright registration program offers the option of registering a group of related works, in unpublished form or when published as a single unit of publication, as a single registration with payment of a single fee. The rules require that the group be assembled in order and be registered under a single collective title. This form of registration is economical and beneficial to many customers. The fact that titles of individual works are not currently part of the registration record, however, poses problems for some filers, particularly those who list their works with rights societies and need to verify that each work is registered. It is also an impediment to potential users who search Copyright Office records for copyright status and contact information.

The proposed solution is to permit the listing of these contents titles in the application form, with the understanding that the individual titles will be indexed in the Copyright Office registration record. The new application form for basic registrations, to be published in both electronic and paper form, accommodates this type of registration. The level of effort to process these registrations, evidenced by a cost analysis, dictates that a higher fee be charged. The Office proposes to charge for each work included in the collection for which the title is listed. The variance in fee per title reflects the higher cost for paper applications, which require that Office staff enter the contents titles into the registration record, while the titles entered by the filer into an electronic application will be transferred automatically to the record upon approval of the claim.

This specific service has not been provided before. To estimate the cost, the Office used the known cost of typing titles into the record in the document recordation process, a cost identified in its cost study. Added to this is a percentage of the cost of examining an individual work, anticipating higher correspondence costs, also included in the cost study.

**B. Fairness, equity, and due consideration to the objectives of the copyright system**

The Copyright Office considered the fairness and equity of the cost differential for electronic versus paper filings. In particular, the Office noted that there are many current or future filers who may find it difficult to file electronically and thus take advantage of the lower fee. Not all authors and composers are in a position financially to own a computer and subscribe to Internet service. Those who do, however, have invested a substantial sum of money, far exceeding the savings on a registration filing, to enable themselves to file electronically. Further, many libraries and civic centers offer free access to computers and Internet service to their patrons. If the savings in fees is important to the filer, using this free access is an option available to virtually all potential filers. The Office believes the reduced fee for electronic filing meets the standard of fairness and equity.

The differential fee, by making filing cheaper for electronic filers, also furthers the objectives of the copyright system. Paper filing has traditionally been centralized. Those who sought services had to send their request to the Office's Capitol Hill location by mail, courier, or in person. Payments had to be made by paper payment in most cases because security concerns dictated that the Office not accept credit card payments by mail. Electronic filing brings Copyright Office services to filers' homes and offices. Fees can be paid by credit or debit card, by electronic check, or by deposit account debit, all available securely online. Many filers, including nearly all those registering unpublished works, can attach their deposit to the application and send it electronically as well. This itself can be a significant cost savings in packaging and postage for those who would otherwise have to mail a large manuscript, a CD, or other deposit. The convenience and cost savings make registration more attractive and the considerable benefits afforded timely registrations easier to achieve.

By encouraging electronic registration, the Office expects that the overall number of registrations will increase, that registrations will be processed more quickly, and that registration records will be made available sooner to the public.

The two fees for listing individual contents titles in paper and electronic filings meets the standard of fairness and equity for the same reasons as the lower filing fee for electronic filing. Offering this option serves the objectives of the copyright system by creating a more robust public record where works can be readily located by their individual titles rather than a collective title which may bear no relationship to any individual work contained in the collection. This advantage will facilitate business dealings with respect to these works for creators and users alike.

### **C. Projected revenue based on proposed fees**

The Copyright Office appreciates that offering a reduced fee to electronic filers will result in lower receipts for that group of claims. If 20% of claims filed in the fourth quarter of FY 2007 are filed electronically, the Office may lose \$281,733 in fee receipts. If 30% of claims are filed electronically in FY 2008, at current filing levels, the Office's receipts for registration filing fees will drop \$1,690,398. Some of the loss may be offset by increased filings by those customers who find electronic filing attractive. An increase of 2% resulting from surplus electronic filings would boost receipts by \$471,311 in FY 2007. It is less certain how frequently the new option of listing contents titles for group registrations will be used. If 50,000 titles are listed by filers, half electronically and half in paper filings, the additional receipts would be \$100,000.

The Copyright Office believes that a significant fee advantage is necessary to entice users, particularly those who are accustomed to paper filing, to begin filing electronically. It considers reduced fee receipts in the last quarter of FY 2007 and in FY 2008 an investment in the future of electronic filing. The long term advantage of enhanced electronic filing is that registration

pendency time will be greatly improved because of the many steps that can be eliminated for these claims. It is also possible that in future years, simplified processing of electronic claims can lead to savings by attrition of staff and/or reduced equipment costs that will offset any decline in fee receipts.

#### **D. Conclusion**

The Copyright Office believes that the proposed fee adjustments meet the statutory goals of fairness, equity, and due consideration to the objectives of the copyright system, and respectfully requests that Congress approve these fees as proposed in this report.

#### **E. Schedule of proposed fee changes**

<b>Service</b>	<b>Current fee</b>	<b>Proposed fee</b>
1) Basic registration (when filed electronically)	\$45	\$35
2) Listing titles of individual works registered as a collection (filed electronically)	N/A	\$ 1 per work/title
3) Listing titles of individual works registered as a collection (filed on paper)	N/A	\$ 3 per work/title

