

LIBRARY OF CONGRESS**Copyright Office****37 CFR Parts 201, 202, 203, 204, and 211****[Docket No. 98-2C]****Fees****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Final Regulations.

SUMMARY: The Copyright Office is issuing final regulations adjusting certain fees it charges for copyright registration, recordation, and related services in order more nearly to recover the reasonable costs of providing these services. Formerly most of these fees were determined by Congress and were referred to as statutory fees. In the future, they will be referred to as fees for registration, recordation, and related services. To facilitate public reference and Copyright Office administration, the Office is also consolidating and relocating in one new regulatory section most references to fees for other services, including fees for discretionary or special services and services performed by the Licensing Division.

EFFECTIVE DATE: July 1, 1999.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**I. Background**

On November 13, 1997, Congress amended Section 708 of title 17, United States Code, to authorize the Register of Copyrights to fix the basic registration and other fees described in section 708(a)(1)-(9) to recover reasonable costs incurred for providing the service and to add an adjustment for inflation. Pub. L. 105-80, 111 Stat. 1529 (1997). Congress had adjusted these fees in 1990. Copyright Fees and Technical Amendments Act, Pub. L. 101-318, 104 Stat. 287 (1990). The 1997 legislation authorizes the Register of Copyrights to set all fees assessed by the Copyright Office rather than follow the former practice whereby Congress set some and the Register set others. Congress went on, however, to state what the Register must do in order to increase copyright fees. First the Register has to conduct a study of the costs for provision of services. Then on the basis of the study,

barring legislation to the contrary, the Register can fix fees that (1) recover reasonable costs and (2) are fair, equitable, and consistent with the objectives of the copyright system.

In preparation for increasing fees, the Office undertook a comprehensive economic analysis of the operating costs involved in providing services to users that culminates with the fees identified in this final regulation. The Register began by appointing an internal task force, the Fee Analysis Task Force Group (FEATAG), to conduct the eighteen month project. The Register then commissioned financial management consultants and an outside company, Abacus, to determine what cost recovery would be after certain necessary adjustments were made. FEATAG analyzed Abacus's study and made recommendations of its own, including a recommendation to amend the special service fees described in 17 U.S.C. 710(a)(10). See Notice of Proposed Rulemaking, 63 FR 15802 (1998). After full consideration of public comments, on May 28, 1998, the Office issued final regulations adjusting the special service fees. 63 FR 29137 (1998).

On August 13, 1998, in the second phase of consideration of fee adjustments, the Copyright Office proposed two alternative schedules of fees that would increase basic registration fees and other statutory or required fee services in a Notice of Inquiry (NOI). This NOI was designed specifically to address the congressional criteria for statutory fees. Schedule I fees would have increased basic registration fees from \$20.00 to \$45.00. Preliminarily, the Office met with representatives of several authors' groups and representatives of other copyright interests with concerns about potential fee increases. These initial comments led the Office to propose an alternative to Schedule I which would have increased basic registration fees for individual authors more modestly, from \$20 to \$35. To make up for the shortfall in income from individual authors, Schedule II would have set basic registration fees for nonindividual authors at \$50. The Office requested public comment on these two proposals, and announced a public hearing to be held on October 1, 1998. See FR 43426 (1998).

Comments

The Office heard nine witnesses and received twenty-three written comments on the matter of adjusting statutory fees. The hearing yielded additional data to fulfill the congressional directives of cost recovery, fairness, equity, and adherence to the objectives of the

copyright system. This material enabled the Office to review the costs of providing services in light of the particular needs of the public, the Library of Congress, and the overall objectives of the copyright system. With the hearing and subsequent analysis, the Office was able to conclude its extensive study of costs and consideration of all other pertinent information including the effect of a fee increase on collections and exchange programs of the Library of Congress.

Following its analysis of all information, the Office completed the last phase of its study, presenting its fee recommendations in a comprehensive report to Congress on February 1, 1999. Analysis and Proposed Copyright Fee Schedule to Go Into Effect July 1, 1999, Register of Copyrights, U.S. Copyright Office (1999).¹ The report analyzes the testimony and written comments in detail, and shows how the statutory criteria were applied to the ultimate decision to reduce the amount of the proposed fee increase for basic registration.

Although the Office believes that generally a schedule of fees should be based on full recovery of direct costs, it recognizes that not all costs of the Office should be borne by the fees, in view of the many services the Copyright Office performs for the Library of Congress, the U.S. Congress, the administration, and the public in general. In the past, Congress has consistently set fees for basic services at a level that recovers about two-thirds of the Office's costs, with the rest of the budget coming from taxpayer revenue. The public comments also revealed that the registering public, based on its view of what is reasonable, fair, and equitable, believed that not all costs of the Copyright Office should be borne by the user. The major concern addressed by individual authors and representatives of interest groups was the size of both proposed increases for registration. Some significant concerns of the witnesses and commentators are reflected in the following questions and answers.

1. Based on the Fees Proposed, Who Is Unlikely To Register

Witnesses representing small and mid-size music publishers, individual songwriters and their estates, and graphic artists and journalists, newsletter publishers and photographers, as well as a representative of the Copyright Office's largest single customer stated that they would be unable to register if fees were

¹ This report has been published on the Copyright Office website [www.loc.gov/copyright].

increased to the proposed levels. Some commentators pointed to the potential for overall erosion of the value of the copyright registration record that would result from the inability of many applicants to afford registration. The link between registration and the availability of strong remedies for registration afforded by section 412 of the copyright law concerned most commentators, and one stated that the assumption that these remedies would be available to all underlies the premise of reasonable registration fees.

2. Should an Individual Author of Unpublished Works Pay a Lower Registration Fee

All the groups representing individual authors supported a lower fee for registrations made by their members, but their request for reduced fees were not restricted to unpublished works. Some organizations noted that given the higher susceptibility of published works to infringement, particularly when placed online, published works by individual authors should be included in this option.

3. Should There Be Other Distinctions in Assessing Fees

a. Should there be a small business exemption? A number of organizations favored a small business exemption, offering various solutions for how the exemption should be crafted. One witness, however, testified that organizations would be unwilling to disclose net worth information to qualify for such an exemption. Even organizations favoring this exemption noted potential problems with administering the exemption, in addition to expected new costs solely attributable to its administration.

b. Should there be a higher fee for works made for hire? This two-tier option was strongly supported by writers' organizations, while representatives of the motion picture, computer software, and other industries opposed it. One common interest of groups favoring higher fees for works for hire was the collective desire to deter publishers from forcing work made for hire agreements on unwilling authors. Underlying this concern is their presumption that publisher/employers are better able to pay higher fees than individual authors.

c. Should the fee be based on the commercial value of the work? While some organizations urged the Copyright Office to set fees based on the value of the work, such as a sliding scale related to a work's expected revenue, most commentators rejected this alternative. This also could be expected to add

significant administrative costs. On the whole, witnesses and commentators believed the Office should avoid tying fees to distinctions unrelated to the cost of providing particular services.

4. Should the Office Exclude Certain Costs That Do Not Relate Directly to Core Registration/Recordation Functions and Allocate Some Registration Costs to Other Beneficiaries

Although numerous commentators discussed the detrimental impact that increased costs would have on the objectives of the copyright system, three commentators specifically supported the exclusion of certain costs not directly related to core functions. One urged that the taxpayer bear a greater portion of registration costs since the public benefits from the copyright system. Other commentators questioned whether the statutory mandate of fairness and equity was addressed in the proposed increase, given that fees would in some cases more than double current levels.

Finally, commentators stated that the proposed fees threatened the goals of the copyright system. Emphasizing that the size of the proposed fee increase threatened erosion of the public record, they noted the wide range of beneficiaries of the copyright system available to share the full economic burden of registration. The commentators left the clear impression that imposing full or nearly full cost recovery on applicants whose works are marginally profitable and to whom completion of their own copyright application materials is an administrative burden will likely cause them to drop out of the system, vitiating the value of a comprehensive public record of registrations.

A more complete summary of all phases of the Office's work in setting new copyright fees is included in *Analysis and Proposed Copyright Fee Schedule To Go Into Effect July 1, 1999*, the report the Register submitted to Congress on February 1, 1999.

II. Final Regulations

A. Adoption of new fees for registration, recordation and other required services

As detailed in the report, after careful consideration of all hearing testimony and written comments, the Copyright Office determined it should recommend registration fees that were not as great an increase as those originally proposed. To avoid undermining the value of the registration system, particularly for individual authors and small businesses, thereby reducing the availability of works for the Library of

Congress' collections and programs, the Register reduced the proposed fee for basic registration from \$45 (or \$35/\$50) to \$30. By maintaining the other fees at the levels proposed to recover reasonable costs, this fee adjustment responds both to individual authors' wish not to face a dramatic fee increase that would price them out of the system and to the Office's obligation to recover more of its operating costs through fees.

B. Fees Related to Group Registration of Daily Newsletters

In one special adjustment, the Office is amending the group registration procedure for daily newsletters that are published at least twice weekly. Information on this amendment is being published today elsewhere in this issue.

C. Clarification and Consolidation of Fees in Regulatory Text

The Office is also clarifying an existing procedure related to requests for material under § 202.2(b)(4).

With respect to organization of fee information in the Copyright Office regulations, these regulations consolidate most fees in one new section, 37 CFR 201.3, and remove specific references to fees in disparate sections. In making this consolidation, the Office identifies in § 201.3(c) fees for certain registration, recordation and related services including those formerly known as "statutory fees" which are currently located in 17 U.S.C. 708(a)(1)-(9);² identifies in § 201.3(d) special service fees referred to in section § 708(a)(10) and formerly located at 37 CFR 201.32; and identifies in § 201.3(e) fees related to services provided by the Licensing Division.

New subsection § 201.3(e) provides a quick reference for certain services provided by the Licensing Division. Some of the licensing fees contained in § 201.3(e) relate to basic services described in § 201.3(c) and have been adjusted; others remain the same. Royalty payments for compulsory licenses are not included in § 201.3(e).

This reorganization of copyright fees should facilitate public reference to current fees and the Office's future amendment of fees. Future fee adjustments will be considered every three years; the percentage increase, however, is expected to be smaller.

²The Office notes that beginning on July 1, 1999, the fees currently set out in 17 U.S.C. § 708(a)(1)-(9) will no longer be in effect. The Office will publish all new fees in the Code of Federal Regulations, in Copyright Office Circular 4, and on its website.

D. Fees Identified in Other Regulatory Sections

Certain fees relating to submitting royalties under the compulsory licenses, the processing of Uruguay Round Amendments Act filings, the charges assessed for services related to providing information under the Freedom of Information Act, and new services where a final fee has not been established may be included in other sections of the regulations.

E. Effective Date

Congress has had 120 days to review the fees submitted to it on February 1, 1999. No legislation has been enacted barring adoption of these fees. The Office is, therefore, adopting the proposed fee schedule for registration, recordation, and other related services effective July 1, 1999.

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.

§ 201.2 [Amended]

2. Amend § 201.2(b)(4) by removing “No charge will be made for this service.” and adding in its place “No charge will be made for reviewing these materials; the appropriate search fee identified in § 201.3(c) or § 201.3(d) will be assessed, and the appropriate copying fee identified in § 201.3(c) or § 201.3(d) will be assessed if the claimant wants and is entitled to a copy of the material.”

3. Add a new § 201.3 as follows:

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

(a) General. This section prescribes the fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Registration, recordation, and related service fee. This is the fee for a registration or recordation service that the Office is required to perform under 17 U.S.C., or a directly related service. It includes those services described in section 708(a)(1)–(9) and authorized by Pub. L. 105–80.

(2) Special service fee. This is a fee for a special service not specified in title 17, which the Register of Copyrights may fix at any time on the basis of the cost of providing the service, as provided by 17 U.S.C. 708(a)(10).

(3) Licensing Division service fee. This is a fee for a service performed by the Licensing Division.

(c) Registration, Recordation and Related Service Fees. The Copyright Office has established the following fees for these services:

Registration, recordation and related services	Fees
(1) Basic registrations: Form TX, Form VA, Form PA, Form SE, (including Short Forms), and Form SR	\$30
(2) Registration of a claim in a group of contribution to periodicals (GR/CP)	30
(3) Registration of a renewal claim (Form RE):	
• Claim without Addendum	45
• Addendum	15
(4) Registration of a claim in a Mask Work	75
(5) Registration of a claim in a group of series (Form SE/Group) \$30 minimum	10
(6) Registration of a claim in a group of daily newspapers, and qualified newsletters (Form G/DN)	55
(7) Registration of a restored copyright (Form GATT)	30
(8) Registration of a claim in a group of restored works (Form GATT Group) \$30 minimum	10
(9) Registration of a correction or amplification to a claim (Form CA)	65
(10) Providing an additional certificate of registration	25
(11) Any other certification, per hour	65
(12) Search—report prepared from official records, per hour	65
(13) Search—locating Copyright Office records, per hour	65
(14) Recordation of documents (single title)	50
• Additional titles (per group of 10 titles)	15
(15) Recordation of a notice of intention (NIE) to enforce a restored copyright containing no more than one title	30
• Additional NIE titles (each)	1
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12
(17) Issuance of a receipt for a deposit	4

¹ Per issue.
² Per claim.

(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	\$70
(2) Service charge for dishonored deposit account replenishment check	35
(3) Service charge for insufficient fee	(1)
(4) Appeals:	
(i) First appeal	200
Additional claim in related group	20
(ii) Second appeal	500
Additional claim in related group	20
(5) Secure test processing charge, per hour	60

Special services	Fees
(6) Copying charge, 15 pages or fewer	15
Each additional page over 1550
(7) Inspection charge	65
(8) Special handling fee for a claim	500
Each additional claim using the same deposit	50
(9) Special handling fee for recordation of a document	330
(10) Full-term storage of deposits	365
(11) Surcharge for expedited Certifications and Documents Section services:	
(i) Additional certificates, per hour	75
(ii) In-process searches, per hour	75
(iii) Copy of assignment or other document, per hour	75
(iv) Certification, per hour	75
(v) Copy of registered deposit:	
First hour	95
Each additional hour	75
(vi) Copy of correspondence file:	
First hour	95
Each additional hour	75
(12) Surcharge for expedited Reference & Bibliography Section searches:	
First hour	125
Each additional hour	95

¹ Reserved.

(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) Certificate of Filing a Notice of Intention (17 U.S.C. 115)	8
(3) Filing Fee for Recordation of License Agreements under 17 U.S.C. 118	50
(4) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States	50
(5) Initial Notice of Digital Transmission of Sound Recording (17 U.S.C. 114)	20
Amendment of 17 U.S.C. 114 Notice	20
(6) Statement of Account Amendment (Cable Television Systems and Satellite Carriers, 17 U.S.C. 111 and 119)	15
(7) Statement of Account Amendment (Digital Audio Recording Devices or Media, 17 U.S.C. 1003)	20
(8) Using Public Photocopier, per page25
Photocopies Made by Licensing Staff, per page40
(9) Search, per hour	65
(10) Certification of Search Report	65

4. Amend § 201.4 by revising paragraph (d) to read as follows:

§ 201.4 Recordation of transfers and certain other documents.

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(d) Fees. The fee for recordation of a document is prescribed in § 201.3(c).

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§ 201.5 [Amended]

5. Amend § 201.5(c)(1) by removing "a fee of \$20" and the accompanying footnote and adding in its place "the appropriate fee identified in § 201.3(c)".

6. In § 201.9, amend paragraph (a) by adding "Licensing Division" after "Copyright Office", by removing "this section" and adding in its place "§ 201.3" and by revising paragraph (b) to read as follows:

§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.

* * * * *

(b) The fee for recordation of a voluntary license agreement under this

section is the basic recordation fee as prescribed in § 201.3(c).

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7. In § 201.10, revise paragraph (f)(2) to read as follows:

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

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(f) * * *

(2) The fee for recordation of a document is prescribed in § 201.3(c).

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8. Amend § 201.12 by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous States.

(a) Written, nonprofit contracts providing for the equitable sharing of costs of videotapes and their transfer, as identified in section 111(e)(2) of title 17 of the United States Code as amended by Pub. L. 94-553, will be filed in the Copyright Office Licensing Division by

recordation upon payment of the prescribed fee. * * *

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(b) The fee for recordation of a document is prescribed in § 201.3.

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§ 201.18 [Amended]

9. In § 201.18, amend paragraph (e)(1) by removing "a fee of \$12" and by adding in its place "the fee specified in § 201.3(e)", by removing "an additional fee of \$8" and adding in its place "the fee specified in § 201.3(e)", and amend paragraph (e)(3) by removing "a fee of \$8" and adding in its place "the fee specified in § 201.3(e)".

§ 201.19 [Amended]

10. In § 201.19, amend paragraph (e)(7)(ii)(D) by removing "a fee of \$8" and adding in its place "the fee specified in § 201.3(e)" and amend paragraph (f)(7)(iii)(D) by removing "a fee of \$8" and adding in its place "the fee specified in § 201.3(e)".

11. Amend § 201.25 by revising paragraph (d) to read as follows:

§ 201.25 Visual Arts Registry.

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(d) Fee. The fee for recording a Visual Arts Registry statement, a Building Owner's Statement, or an updating statement is the recordation fee for a document, as prescribed in § 201.3(c).

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12. Amend § 201.26 by revising paragraph (e) to read as follows:

§ 201.26 Recordation of documents pertaining to computer shareware and donation of public domain computer shareware.

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(e) Fee. The fee for recording a document pertaining to computer shareware is the recordation fee for a document, as prescribed in § 201.3(c).

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§ 201.32 [Removed and Reserved]

13. Section 201.32 is removed and reserved.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

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

Authority: 17 U.S.C. 702.

§ 202.3 [Amended]

15. Amend § 202.3(b)(4)(ii)(B) by removing "A filing fee of \$20" and adding in its place "The appropriate filing fee, as required in § 201.3(c)".

16. Amend § 202.3(b)(5)(v)(B) by removing "A filing fee of \$10" and adding in its place "The appropriate filing fee, as required in § 201.3(c)".

17. Amend § 202.3(b)(6)(i)(E) by removing "A nonrefundable filing fee of \$40" and adding in its place "The appropriate filing fee, as required in § 201.3(c)".

18. Amend § 202.3(b)(7)(ii)(C) by removing "A fee of \$20" and adding in its place "The appropriate filing fee, as required in § 201.3(c)".

19. Amend § 202.3(b)(8)(vii) by removing "a filing fee of \$10" and adding in its place "the appropriate filing fee, as required in § 201.3(c)".

20. Amend § 202.3(c)(2) by removing "a fee of \$20" and adding in its place "the appropriate filing fee, as required in § 201.3(c)".

§ 202.12 [Amended]

21. Amend § 202.12 (c)(3)(i) by removing "20" each place it appears and adding in its place "30" and adding after "work" in the last sentence ", with a minimum fee of US\$30".

22. Amend § 202.12(c)(5)(i) by removing "\$20" and adding in its place "\$30".

23. Amend § 202.12(c)(5)(ii) by adding after "work" in the last sentence ", with a minimum fee of \$30".

§ 202.17 [Amended]

24. Amend § 202.17(g)(2)(ii) by removing "a fee of \$20" and adding in its place "the appropriate fee, as required in § 201.3(c)".

§ 202.19 [Amended]

25. Amend § 202.19(f)(3) by removing "a fee of \$4" and adding in its place "the appropriate fee, as required in § 201.3(c)".

§ 202.23 [Amended]

26. Amend § 202.23(e)(1) by removing "at \$365.00" and adding in its place ", as prescribed in § 201.3(d)".

27. Amend § 202.23(e)(2) by removing "of \$365.00" and adding in its place "prescribed in § 201.3(d)".

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

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

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

§ 203.6 [Amended]

29. Amend § 203.6(a) by removing "section 708 of title 17 U.S.C." and adding in its place "§ 201.3 of this chapter".

30. Amend § 203.6(b)(1) by removing "\$8" and adding in its place "\$25".

31. Amend §§ 203.6(b)(3) and (b)(4) by removing "\$20" each time it appears and adding in its place "\$65".

32. Amend § 203.6(b)(6) by removing "\$20.00" and adding in its place "\$65".

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

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

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

§ 204.6 [Amended]

34. Amend § 204.6(a) by removing "under section 708 of title 17 of the United States Code" and adding in its place "and identified in § 201.3 of this chapter".

PART 211—MASK WORK PROTECTION

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

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

36. Amend § 211.3 by revising paragraph (a) to read as follows:

§ 211.3 Mask work fees.

(a) Section 201.3 of this chapter prescribes the fees or charges

established by the Register of Copyrights for services relating to mask works.

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Dated: May 20, 1999.

Marybeth Peters,
Register of Copyright.

Approved by:

James H. Billington,

The Librarian of Congress.

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LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 202**

[Docket No. RM 99-3]

Registration of Claims to Copyright; Group Registration of Daily Newsletters

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of daily newsletters under conditions similar to those presently in place for group registration of daily newspapers and for the same fee, but with different deposit requirements. A claimant in daily newsletters that are routinely issued at least two days each week may register these newsletters in a group at a reduced fee, on a single application, if they meet certain requirements. The group registration privilege is contingent upon the claimant meeting the conditions specified in the regulation.

EFFECTIVE DATE: This rule will become effective July 1, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax (202) 707-8366. Harriet L. Oler, Assistant Register for Legal Education and Special Programs, Telephone: (202) 707-8350. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Under section 407 of the Copyright Act of 1976, title 17 of the U.S. Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies of the work in the Copyright Office for the use or