

the operation of the Washington Street S136 Bridge across the Norwalk River, mile 0.0, at Norwalk, Connecticut. This deviation allows the bridge to remain in the closed position for five weekends in July and August to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 2 a.m. on July 11, 2009 through 6 a.m. on August 24, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0494 and are available online at www.regulations.gov, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0494 in the docket ID box, pressing enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, judy.k.leung-ye@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The owner of the bridge, Connecticut Department of Transportation, requested this temporary deviation. The Washington Street S136 Bridge, across the Norwalk River, mile 0.0, at Norwalk, Connecticut, has a vertical clearance in the closed position of 9 feet at mean high water and 16 feet at mean low water. The Drawbridge Operation Regulations are listed at 33 CFR 117.217(a).

The Norwalk River supports commercial and recreational vessel traffic. The commercial operators were contacted and no objections were raised.

This deviation allows the bridge to remain in the closed position from 2 a.m. on Saturday through 6 a.m. on Monday, for five weekends: July 11 through July 13; July 25 through July 27; August 8 through August 10; August 15 through August 17, and August 22 through August 24, 2009.

Vessels able to pass under the closed draw may do so at any time.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This

deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

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BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–9]

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 other services provided by the Office which benefit only or primarily the user of that service. The new fees are based on reliable information regarding the costs of providing services, and reflect cost savings associated with the implementation of electronic processing in the Copyright Office in 2007. Under the new fee structure, the fee for online registration of a basic claim will remain \$35. The registration fee for Form CO will be raised from \$45 to \$50 and the registration fee for paper filings of Forms PA, SR, TX, VA, SE and faulty CO will be raised from \$45 to \$65. In a few instances, fees have been adjusted downward from the fees published in the notice of proposed rulemaking in light of comments received from the public.

EFFECTIVE DATE: August 1, 2009.

FOR FURTHER INFORMATION CONTACT:

Tanya Sandros, Deputy General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel. P.O. Box 70400, Washington, DC 20024–0400, Telephone (202) 707–8380. Telefax: (202) 707–8366.

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, Pub. L. No. 105–80, 111 Stat. 1529 (1997), codified as 17

U.S.C. 708(b). The expenses of the Copyright Office have always been substantially funded through the charging of fees for the services provided. Nevertheless, fees have never provided full cost recovery for all expenditures of the Copyright Office. For the last fifty years, cost recovery through the charging of fees has ranged between 50% to 80% of the expenses of the Copyright Office. The current fee adjustment is forecasted to cover approximately 60% of the Copyright Office's expenses.

In 1997, Congress amended section 708 of the Copyright Act, delegating to the Register of Copyrights authority to adjust fees by regulation in accordance with a new procedure. Fees for services specifically enumerated in sections 708(a)(1)–(9), referred to as “statutory fees,” are adjusted according to the procedures set forth in section 708(b). This procedure requires the Register of Copyrights to complete a cost study, and forward an economic report and proposed fee schedule to Congress. The Register may implement the new rules after 120 days unless Congress enacts a law within that period disapproving the new fees.

The Register also has authority under the law to adopt new fees for other services based on “the cost of providing the service.” 17 U.S.C. 708(a). These fees are for services not specifically enumerated in sections 708(a)(1)–(9), and for the purpose of this rulemaking, these fees are termed “discretionary fees.” As with the statutory fees, the Copyright Office adjusts the discretionary fees after conducting a cost study to determine the cost of providing the service and providing the public an opportunity to comment on the proposed fee changes.

The Copyright Office has instituted fee adjustments under the Technical Amendments Act on four separate occasions. The first schedule was adopted in 1999. *See* 63 FR 43426 (August 13, 1998) and 64 FR 29518 (June 1, 1999). Three years later a second adjustment was made raising many copyright fees, but leaving the basic registration fee at \$30. 67 FR 38003 (May 31, 2002). The third fee adjustment was adopted in 2006, in which most statutory fees were again raised in response to an increase in costs. At that time, the basic registration fee was increased from \$30 to \$45. 71 FR 15368 (March 28, 2006) and 71 FR 31089 (June 1, 2006). The registration fee was again adjusted in 2007, at which time the Office established a lower basic registration fee of \$35 for copyright claims submitted electronically, while retaining the \$45 fee for filing a paper

application. 72 FR 33690 (June 19, 2007). The introduction of the dual fee structure reflected the reduced cost of processing electronic claims and served as an incentive to the public to file claims through the then-new online registration system.

In the 2007 adjustment proceeding lowering the fee for electronic submission of basic copyright registration, the Office also stated that it would likely review the registration and service fees once electronic claim processing was operational for a sufficient period of time so as to yield reliable information on the actual costs involved in providing the service. The beta test of the electronic, online registration system began in August 2007 and, in July 2008, the system for the electronic submission of copyright claims was made available to the general public. Also in July 2008, a new procedure was introduced using the new Form CO – a form which must be completed on the Office website and which, when printed out, contains 2-D barcodes that carry the information entered on the application in digital form. In light of the experience and lessons learned over the last 21 months, the Office has reviewed its current practices, assessed the costs, and determined that fee adjustments are now in order.

Proposed fee adjustment and cost study

On October 14, 2008, the Copyright Office published a notice of proposed rulemaking setting out the proposed adjustments for both statutory fees and discretionary fees. 73 FR 60658 (October 14, 2008). Shortly thereafter the cost study upon which the proposed adjustments were based was made available to the public on the Copyright Office web site.

Among the statutory fees, the most important are those for basic registration. In keeping with the Office's goal of encouraging online, electronic registration, the proposed schedule of fees maintained the \$35 fee for electronic copyright registration. However, the Office proposed a rate increase for submissions on existing paper forms, *i.e.*, Forms PA, VA, SR, TX, or SE, from \$45 to \$65, to reflect the added cost associated with processing the information on these forms into the electronic system, and a slight increase to \$50 from \$45 for Form CO. Group registration claims for database updates, published photographs, and contributions to periodicals currently can only be submitted on a paper application at this time. Hence, the fees for a group registration were adjusted upward to the same \$65 fee proposed

for filing a paper application for a single claim. When online group registration of these classes of works becomes available, the notice of proposed rulemaking stated that a lower fee would apply and, therefore, the notice included all fees that would be applicable to claims in a group registration.

In addition to the registration fees, the notice proposed changes to other statutory fees. Specifically, the Office proposed a minimum two hour charge for searches performed by the Records Research & Certification Division, in addition to a further adjustment for the rate of inflation since the last fee adjustment. It also proposed an adjustment to the fee for the recordation of a notice of intention to obtain a compulsory license under section 115(b). The notice proposed increasing that fee from \$12 to \$105, plus an additional \$20 fee for each additional group of ten titles. And finally, the Office suggested a reduction in the fee for supplementary registration from \$115 to \$100, and in the fee for an additional certificate of registration from \$40 to \$35.

For the discretionary fees, adjustments were proposed either to recover the cost of the service or to account for inflation. For example, Licensing Division fees were adjusted based on the cost of providing the service. These services include the filing of an Amended Statement of Account in accordance with sections 111, 112, 119, & 1003; recordation of licensing agreements under section 118; and search, certification, and copying fees. The Office also proposed an additional charge of \$30 for each group of ten domain names in addition to the basic fee for the recordation of an interim designation of agent to receive notification of claimed infringement under section 512(c)(2) in order to cover the costs associated with processing a large number of domain names.

The notice additionally stated the intention of the Copyright Office to harmonize its refund policy. Currently, the Copyright Office retains the filing fee for original, basic, supplementary, or renewal registration even if the claim is rejected because the material deposited was not copyrightable or because the claim was invalid for any other reason, in order to cover administrative costs for handling the claim. The Copyright Office also incurs administrative costs for other services, *e.g.*, processing requests for recordation services or Licensing Division non-royalty fees, where either the request is withdrawn, or cannot be fulfilled due to no fault of the Copyright Office, but the Office

retains no fees to cover processing costs. However, in the notice of proposed rulemaking, the Office stated its intention to modify the regulations to authorize the charging of an administrative fee equivalent to the minimum fee for all services. Such changes are adopted herein.

Comments

The Office received comments from Music Reports, Inc. ("MRI"); Author Services, Inc.; Program Suppliers; and Professional Photographers of America ("PPA"). Each comment addressed a different topic. The issues raised by those submitting comments are summarized and discussed herein.

Final Regulation

a. *Adjusted fee reduced for recordation of a Notice of Intention to Make and Distribute Phonorecords.* Music Reports, Inc., a provider of music licensing and royalty accounting services to digital music services in the United States, opposed the change in the fee for recording the notice of intention. It maintained that the proposed fee of \$105 was excessive and burdensome for filers who have a large number of titles. The comment requested that the Office cap the fee for a single filing at \$20, no matter how many titles were included.

In considering the MRI comment, the Copyright Office reviewed its cost study with respect to the recordation of a notice of intention to make and distribute phonorecords under section 115 of the copyright law, and determined that the cost could be reduced in the near term by having the work involved performed by lower graded staff. With this adjustment, it was determined that a fee of \$60 per filing, plus \$20 per group of ten titles would achieve full cost recovery. This adjustment represents a significant reduction over the proposed fee of \$105 per filing. Accordingly, an adjustment in the filing fee was made in the cost study submitted to Congress on March 15, 2009. The Office also notes that once electronic filing for this service becomes available, costs will likely fall, and if they do, the fee can be reduced.

b. *Adjusted fees reduced for Renewal Addendum.* Author Services, Inc., the literary agency representing the works of L. Ron Hubbard, filed a comment opposing the contemplated increases for registration of a renewal claim. It argued that the proposed fees for renewal registration are too high and should be reduced. The comment expressed the opinion that costs for renewal should have gone down because instructions with new forms issued in October 2007

are more complete, thereby reducing errors in the submissions. They believed the effect of that change was not taken into account.

The Copyright Office has reviewed the cost study with respect to the fees relating to renewal registration, and concluded that the cost for processing a registration of a renewal had increased to the proposed fee of \$115. However, the Office concluded that the current fee of \$220 for Renewal Addendum could cover the cost of that service. Accordingly, the cost study did not ultimately recommend an increase in the fee for the registration of a renewal claim with an addendum. The fee for Renewal Addendum will remain at the current level of \$220.

c. Fees for registration of groups of published photographs. The Professional Photographers of America objected to raising the \$45 fee to \$65 primarily on the ground that the Office had not, as of yet, made such registration available online. The increase, the comment argued, would discourage photographers from completing the registration process. Moreover, PPA objected to the stated intention of the Copyright Office to charge a per-title processing fee for listing titles of individual works in an application for a collection.

The Copyright Office believes the \$65 fee is appropriate for photographers to pay in the interim period between the fee increase and the offering of group registrations in eCO. Photographers can submit an application for group registration encompassing hundreds of photographs and the current \$35 fee does not cover the cost of processing such a claim. When electronic filing becomes available, claimants will be able to register groups of published photographs for the \$35 fee because of the savings associated with the electronic registration process. As regarding the proposed per-title fee for unpublished collections, before the fee is implemented the public will have an opportunity to comment on the change.

d. Fees for special services delivered by the Licensing Division. The Motion Picture Association of America, Inc. filed a comment on behalf of its member companies and other program suppliers, objecting to the imposition of fees on program suppliers relating to the review of cable, satellite, and Dart compulsory license records. They contended that costs for requests from program suppliers for searches, copying, and other services should be deducted from the general royalty fund, rather than

collected from the program suppliers who made the requests because the costs of performing such services have already been deducted from the royalty pools.

The Copyright Office rejects the argument of the MPAA that requests for special services by certain program suppliers should be deducted from the general royalty fund. Program suppliers who order special services obviously have personal business reasons for requesting the service, and such suppliers are the only ones who benefit from the Copyright Office fulfilling the requests. If such requests were deducted from the general royalty fund, all claimants to the fund would be paying for the special requests of a few claimants. The Office believes it apparent that program suppliers who request special services, and are the only ones benefitting from the service, should pay the costs of those services.

e. Faulty Form CO submission. Recent experience of the Copyright Office in processing Form CO submissions with 2-D barcodes has revealed common mistakes made by remitters which make it impossible to process the information in the barcodes. The option of filing on Form CO with 2-D barcodes was implemented on July 1, 2008. The 2-D barcode captures the data entered into Form CO and, when scanned in the Office, populates the various fields with the digitized data, eliminating the need for any transcription. Users who complete the Form CO on the Copyright Office Web site, print it from the Web site, and submit it with the fee and deposit copy or copies are charged a fee that is higher than the online registration fee, but lower than the fee for paper filings using the old application forms. The slightly higher costs associated with processing Form CO as compared to the online registration claims accounts for the price differential.

Unfortunately, three common mistakes are being made by users which make the 2-D barcode useless and require the Office to process the application in a similar fashion as the traditional paper forms. The first mistake is submitting a CO application which lacks all required barcodes. The second is submitting a CO application which is incomplete; in this instance a statement appears on the website that the application is incomplete and should not be submitted. The third is adding information to the form after it has been printed. In these three instances, the costs of processing the

form is similar to the costs of processing paper applications because the Office cannot rely solely on the information in the 2-D barcodes, if available. Due to the added cost to the Copyright Office, these faulty CO applications must be handled like a paper claim and, hence, the remitter will be charged the same \$65 fee as traditional paper applications.

f. Refund policy. As indicated in the notice of proposed rulemaking, the Copyright Office is amending regulation § 201.6(c) to harmonize its refund policy. Under the amended regulation, fees will be retained for submission of a document found unrecordable; for requests for preparation of a search report or for certification and document services which are later withdrawn; or for requests for special services of the Licensing Division which are later withdrawn, and cannot be fulfilled due to a mistake in the submission.

g. Effective date. Congress has 120 days from March 15, 2009, to review the proposed changes to the statutory fees submitted to Congress on that date. If no legislation is enacted barring adoption of these fees during that time period, the proposed fee schedule for registration, recordation, and other related services shall be adopted, effective August 1, 2009. 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 August 1, 2009 as well.

List of Subjects in 37 CFR Parts 201

Copyright, General provisions.

Final Rule

■ In consideration of the foregoing, part 201 of 37 CFR chapter II is 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.

* * * * *

(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) Registration of a basic claim in an original work of authorship: | |
| Electronic Filing | \$35 |
| Form-D barcode application properly completed online) | 50 |
| Forms PA, SR, TX, VA, SE; and Form CO without barcodes or incomplete information, or information added after printing (paper filing). | 65 |
| (2) Registration of a claim in a group of contributions to periodicals (Form GR/CP), published photographs, or database updates: | |
| Electronic filing | 35 |
| Forms GR/CP, PA, SR, VA and SE (paper filing) | 65 |
| (3) Registration of a renewal claim (Form RE): | |
| Claim without Addendum | 115 |
| Addendum | 220 |
| (4) Registration of a claim in a group of serials (Form SE/Group)(per issue, minimum 2 issues) | 25 |
| (5) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN) | 80 |
| (6) Registration of a claim in a restored copyright (Form GATT) | 65 |
| (7) Preregistration of certain unpublished works | 115 |
| (8) Registration of a correction or amplification to a claim (Form CA and Form DC) | 100 |
| (9) Registration of a claim in a mask work (Form MW) | 105 |
| (10) Registration of a claim in a vessel hull (Form D/VH) | 220 |
| (11) Providing an additional certificate of registration | 35 |
| (12) Certification of other Copyright Office records (per hour) | 165 |
| (13) Search report prepared from official records (per hour) (minimum: 2 hours) | 165 |
| Estimate of search fee | 115 |
| (14) Location and retrieval of Copyright Office materials or records (per hour) | 165 |
| Fee for location and retrieval of electronic records (per quarter hour) (minimum: 1/2 hour) | 41.25 |
| (15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title) | 105 |
| Additional titles (per group of 10 titles) | 30 |
| (16) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under § 512(c)(2) (single name) .. | 105 |
| Additional domain names (per group of 10) | 30 |
| (17) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) (single title) | 60 |
| Additional titles (per group of 10) | 20 |
| (18) Issuance of a receipt for § 407 deposit | 30 |

(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 | \$165 |
| (2) Service charge for dishonored deposit account replenishment check | 85 |
| (3) Service charge for an uncollectible or non-negotiable check | 25 |
| (4) Appeals: | |
| (i) First appeal | 250 |
| Additional claim in related group | 25 |
| (ii) Second appeal | 500 |
| Additional claim in related group | 25 |
| (5) Secure test processing charge (per hour) | 165 |
| (6) Copying of Copyright Office records by staff: | |
| Photocopy (b&w, 8 1/2 x 11) (per page, minimum \$12) | 0.50 |
| Photocopy (b&w, 11 x 17) (per page, minimum \$12) | 1 |
| Photocopy (color, 8 1/2 x 11) (per page, minimum \$12) | 2 |
| Photocopy (color, 11 x 17) (per page, minimum \$12) | 4 |
| 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 | 100 |
| Zip or floppy disk | 100 |
| (7) Special handling fee for a claim | 760 |
| Additional fee for each claim using the same deposit | 50 |
| (8) Special handling fee for recordation of a document | 480 |
| (9) Handling fee of extra deposit copy for certification | 45 |
| (10) Full-term retention of a published deposit | 470 |
| (11) Expedited search report service (per hour) (minimum 2 hours) | 445 |
| (12) Expedited location and retrieval, certification, and copying services (surcharge, per hour) | 265 |
| (13) Notice to Libraries and Archives | 50 |
| Each additional title | 20 |
| (14) Service charge for Federal Express mailing | 40 |

| Special Services | Fees |
|--|------|
| (15) Service charge for delivery of documents via facsimile (per page, 7 page maximum) | 1 |

(e) *Licensing Division service fees.* following fees for certain services
 The Copyright Office has established the 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) (single title) | \$60 |
| Additional titles (per group of 10) | 20 |
| (2) Recordation of a licensing agreement for use of certain works in connection with noncommercial broadcasting (17 U.S.C. 118) ... | 140 |
| (3) Recordation of certain contracts by cable TV systems located outside the 48 contiguous states | 50 |
| (4) Amendment to Statement of Account filed pursuant to 17 U.S.C. 111, 119 or 1003) | 100 |
| (5) Notice of Digital Transmission of Sound Recording (17 U.S.C. 112 and 114) | 25 |
| Amended Notice of Digital Transmission of Sound Recording | 25 |
| (6) Photocopy of record by staff (b&w) (per page) (minimum \$12) | 0.50 |
| (7) Search and report services (per hour) | 165 |
| (8) Certification of search report (per hour) | 165 |

■ 3. Amend § 201.6 by revising paragraph (c) to read as follows:

§ 201.6 Payment and refund of Copyright Office fees

* * * * *

(c) *Refunds.* (1) Money remitted to the Copyright Office for basic, supplementary or renewal registration, including mask works and vessel hulls, will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the fee will be refunded, but amounts of \$50 or less will not be refunded unless specifically requested, and refunds of less than \$2 may be made in postage stamps. Except for services specified in paragraphs (c)(2) and (3) of this section, before making any refund for fees remitted in relation to non-registration

copyright services, the Copyright Office shall deduct an administrative processing fee in an amount equivalent to one hour of the requested service, or the minimum charge for the service.

(2) In instances where money has been remitted to pay for recordation of a document, and it is determined that the document cannot be recorded, the basic recordation fee covering one title will be retained as a filing fee. Any additional money over the basic fee for one title will be refunded, but amounts of \$50 or less will not be refunded unless specifically requested, and refunds of less than \$2 may be made in postage stamps.

(3) For services where fees are calculated on an hourly basis, such as preparation of a search report, certification of certain Copyright Office records, or location and retrieval of records, in instances where the request is withdrawn before work is begun by

the staff member responsible for providing the service, the Copyright Office will retain half of the hourly charge for administrative expenses, and refund the remaining portion of the fee subject to paragraph (c)(1) of this section. In addition, the fee for an estimate of a search fee is non-refundable. This policy applies to requests to the Records, Research and Certification Section, and requests to the Licensing Division.

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Dated: June 25, 2009.

Marybeth Peters,
Register of Copyrights.

Approved by:
James H. Billington,
The Librarian of Congress.
 [FR Doc. E9-16126 Filed 7-8-09; 8:45 am]

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