United States General Accounting Office

GAO

Report to the Chairman, Committee on the Judiciary, U.S. Senate

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INTELLECTUAL PROPERTY

Fees Are Not Always Commensurate With the Costs of Services

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GAO

United States
General Accounting Office
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Resources, Community, and
Economic Development Division

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May 9, 1997

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

As requested, this report presents the results of our review of issues related to intellectual property fees charged by the Patent and Trademark Office within the Department of Commerce and the Copyright Office within the Library of Congress. Our report provides information on the manner in which these agencies use fees to provide services. The report specifically discusses patents, trademarks, and copyrights. It also provides matters for congressional consideration concerning both patents and copyrights and a recommendation to the Register of Copyrights.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to appropriate House and Senate committees; interested Members of Congress; the Secretary of Commerce; the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks; the Librarian of Congress; the Register of Copyrights; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

If you or your staff have any questions about this report, please call me at (202) 512-3841. Major contributors to this report are listed in appendix XIV.

Sincerely yours,

Victor S. Rezendes
Director, Energy, Resources,
and Science Issues

Executive Summary

Purpose

The Congress has begun to consider a number of issues involving the federal agencies that issue or register patents, trademarks, and copyrights—commonly known as intellectual property. Furthermore, the administration has made the reform of intellectual property a part of its plan to "reinvent" government. In this regard, GAO has issued a number of reports discussing certain operations of the Patent and Trademark Office (PTO) within the Department of Commerce and the Copyright Office within the Library of Congress.

The Senate Committee on the Judiciary is considering funding and organizational proposals for PTO and the Copyright Office. To help the Committee in its deliberations, the Chairman requested that GAO review the manner in which these agencies use fees in providing services. He asked GAO to address fees as they relate specifically to patents, trademarks, and copyrights and, where applicable, to determine (1) how fees are set for the services provided by the federal agencies, (2) the extent to which intellectual property fees are recovering the costs of the services provided, (3) whether different users of the same services pay different fees, (4) whether patent fees encourage or discourage the completeness and accuracy of applications, and (5) the potential effects of increasing copyright fees. This report addresses these issues in individual chapters on patents, trademarks, and copyrights. Because the last two issues relate primarily to patents and to copyrights, respectively, the report addresses them only in those applicable sections.

Background

The federal government regulates intellectual property rights through the grant of patents and the registration of trademarks and copyrights. Patents and trademarks are administered by PTO, while copyrights are administered by the Library of Congress. While the three types of intellectual property bear many similarities, they also have important differences.

Generally, inventors need to obtain patents in order to benefit economically from their inventions. The grant of a patent in the United States is a complicated process whereby PTO examiners determine that the product or process in question is new, useful, and non-obvious. Once the patent is issued, the patent holder in most cases has exclusive rights to the invention for 20 years from the date the application was filed.

A trademark is acquired through use rather than registration; however, registration does afford the trademark owner procedural advantages

against infringement. The trademark process also requires an examination by PTO to ensure that others have not already registered the same or a similar trademark, but the examination process is more streamlined. A trademark registration has a term of 10 years but, unlike patents and copyrights, can be renewed.

A copyright is gained when a work is created, not when it is registered. However, much like trademarks, registration of a copyright affords the copyright owner certain statutory rights that would not be available otherwise. The examination process for copyrights is much different than for either patents or trademarks because the Copyright Office does not verify whether others have already registered the same or similar works. In most cases, a copyright lasts for the author's life plus 50 years.

Both PTO and the Copyright Office charge fees for the services they provide, but they differ in the types of fees charged and the revenues obtained. In fiscal year 1995, patent fees totaled $577.7 million, trademark fees totaled $68.5 million, and copyright fees totaled $14.6 million.

Results in Brief

Patent fees—like trademark and copyright fees—are set primarily by statute. Overall, patent fees recover the costs of the patent process within PTO and, by law, can be adjusted annually for inflation. Despite this self-sufficiency overall, fees for individual services are not necessarily commensurate with the costs of those services because (1) the largest fees are paid at the back end of the patent process, while PTO incurs most of its costs at the front end, and (2) different categories of applicants pay different fees for the same service. Generally, successful applicants and large entities tend to pay more than unsuccessful applicants and small entities for the same services. Furthermore, because fees do not differ on the basis of the complexity of the invention and because fees do little to discourage the submission of inaccurate and incomplete applications, applicants with complicated inventions and applicants who create delays in the process may not pay fees sufficient to recover the additional costs they create.

Trademark fees also recover the overall costs of the trademark process and can be adjusted annually for inflation. However, trademark fees are smaller and fewer in number than patent fees. In addition, fees and costs tend to be more closely aligned in the trademark process because most income is received prior to the examination of the application. There are no differences in trademark fees based on the size of the entity applying,

no significant differences in the costs for different types of trademark applications, and fewer costs and delays caused by inaccurate and incomplete applications.

Copyright fees are the smallest and simplest of all the federal intellectual property fees. Most applicants pay only an up-front, one-time registration fee of $20, with no differences based on entity size, the accuracy or completeness of the application, or the type of copyright being registered. However, copyright fees do not recover costs either in total or by type of service and, as a result, the Copyright Office receives about $10 million a year in appropriations. Copyright fees have not been increased since fiscal year 1991 because the Copyright Office chose not to raise fees to adjust for inflation in fiscal year 1995. The Copyright Office has supported the need for fee increases in the past and currently supports legislative proposals that would give the Register of Copyrights the authority to raise fees to recover the costs of copyright registration and services. Copyright Office officials do not believe that the Copyright Office itself should be fully self-sustaining through fees because it performs other functions that the officials believe are more appropriately funded through appropriations. Similarly, the Copyright Office did not support a 1996 proposal to make it self-sustaining through fees in a new, government-owned, intellectual property corporation, believing that such a move would lead to unacceptably high fee increases and registration decreases.

Principal Findings

Patent Fees Recover Overall Costs but Not the Costs of Individual Services

Most patent fees are set by statute and tend to be the largest and most extensive of all federal intellectual property fees, with 139 individual types of fees ranging as high as $2,900 in fiscal year 1995. Once dependent on appropriations, the patent process has been self-sustaining overall since fiscal year 1993. However, for several reasons, individual applicants may not pay fees that are commensurate with the services they receive. First, while most of the costs of the patent process are incurred during PTO's examination of the application, most of the patent fees are paid after the examination has been completed. In fiscal year 1995, for example, about 19 percent of the fee revenues came from issue fees, which are payable after PTO has decided that a patent can be granted, and about 34 percent were maintenance fees, which are payable in three stages after the patent is issued.

Second, fees do not match the costs of individual services because large entities—for-profit organizations with 500 or more employees—pay fees that are twice the size of those paid by small entities. While this feature was added to the law in 1982 to reduce the burden of increasing fees on small businesses, nonprofit organizations, and individual inventors, PTO officials said there are no differences in the costs associated with the patents granted to large and small entities.

Third, any particular patent fee may not recover costs because fees generally do not vary by invention type, even though the time and complexity involved in examining applications for different types of inventions can vary significantly. For example, overall "patent pendency"—the time taken by PTO to examine an application prior to a patent being issued or the application being abandoned—averaged 19.8 months for fiscal year 1995. However, pendency varied from 17.4 months for solar heating devices to 26.2 months for computer systems.

Finally, patent fees may not recover costs because they generally are not designed to discourage an applicant's delays in the examination process. Examination time can increase significantly when PTO has to obtain additional information from the applicant because the application was either inaccurate or incomplete. Even though some applicants pay additional fees for such delays, the "extension" fees accounted for about 8 percent of total fees collected in fiscal year 1995, while the delays for which extension fees were paid accounted for about 19 percent of the overall average patent pendency.

PTO recognizes that patent fees are not necessarily commensurate with the costs of individual services. However, its current cost-accounting system does not provide sufficient information to determine costs on a per-service basis. For this reason, PTO has undertaken two studies designed to improve its cost-accounting system and to determine how fees for both patents and trademarks compare with the costs of individual services. The first of these—a study of PTO's cost-accounting system—is due to be completed in December 1997.

Trademark Fees Appear to Be Aligned With Costs

While smaller and fewer in number, trademark fees are similar to patent fees in that most revenues come from statutory fees, the fees can be adjusted annually to account for inflation, and fee revenues are sufficient to make the trademark process self-sustaining within PTO. Furthermore,

the fees do not vary on the basis of the type of trademark for which registration is sought.

Trademark fees are more nearly commensurate with the costs of individual services than are patent fees. This is because (1) most costs occur at the front end of the process, with about 76 percent of the costs of the trademark process attributable to the examination of applications; (2) most fees are paid prior to or during examination, with over 71 percent of the trademark revenues obtained through the basic filing fee alone; (3) the fees do not vary on the basis of the size of the entity applying for registration; and (4) registration costs for different types of trademarks do not vary significantly. Similarly, incomplete and inaccurate applications do not create the delays and costs common in the patent process.

PTO officials believe that, despite the relatively close alignment of trademark fees and costs, adjustments may be needed in specific areas, such as appeals, where the current $100 fee is below PTO's costs of handling these actions. These officials believe that, as with patents, the two studies underway eventually will enable PTO to determine better the costs of the services being provided and the adequacy of the fees charged for these services.

Copyright Fees Do Not Recover Costs

In many ways, copyright fees differ from patent and trademark fees. While copyright fees are also set primarily by statute, they do not recover the costs of the Copyright Office either in total or by type of service. In most cases, an applicant pays only $20 to register a copyright, yet the average cost of registration in fiscal year 1995 was $36.53 per application, and the average cost by the type of copyright ranged from $28.32 to $59.60.

The basic copyright application fees have not been raised since fiscal year 1991, when, with the support of the Copyright Office, they were doubled to $20. Copyright Office officials said that they have supported proposals to increase fees since then but only when they believed such an increase would be cost-effective and would not lead to an unacceptable decrease in applications for copyright registration. In this regard, the Copyright Office has supported proposed legislation that would give the Register the discretion to raise fees to reflect the fair cost of registering copyrights and providing services. The Copyright Office is now planning a fee and cost study to determine the costs of individual copyright services and the fees necessary to recover these costs.

The Copyright Office did not raise fees in fiscal year 1995 to account for the effects of inflation as authorized by law. The acting Register of Copyrights at the time did not do so because she believed that the revenues attributable to the increase were not worth the additional costs that would be incurred. However, GAO found that fees could have been raised overall by more than 16 percent, which would have increased net revenues by about $500,000 in the first year and even more in subsequent years. In addition, the adjusted fees would have been the basis for future fee increases.

In September 1996, the Copyright Office opposed proposed legislation that would have made it self-sustaining through fees in a new, government-owned, intellectual property corporation. The Register of Copyrights told the Senate Committee on the Judiciary that, for the Copyright Office to be self-sustaining under such a proposal, fees would have to be raised fivefold and applications would fall as a result. GAO found that the Copyright Office's projections were based on a worst-case, least-likely scenario and that other scenarios would have resulted in fees that ranged from $41 to $89 per application as well as smaller decreases in applications.

Other studies—including a GAO-contracted management review of the Library of Congress[1] and an internal review by the Library itself—support the need for a fee increase. In addition, one of the options in the Congressional Budget Office's deficit reduction package for fiscal year 1998 would make the Copyright Office self-sustaining, with fees in the range of $35 to $40 per application. The Register of Copyrights believes that the copyright process can be made self-sustaining within the Library, probably by increasing fees to about twice the current level. However, she said that certain costs of the Copyright Office not directly tied to the registration process should continue to be funded through appropriations.

On a related issue, costs attributable to the copyright process are higher than they need to be because of a provision in the law that the Copyright Office maintain copies of unpublished works for the full term of the copyright, now estimated to be an average of 125 years. Because the Library of Congress and the copyright owners rarely retrieve these copies and many of the works deteriorate after a few years, copyright costs could be reduced by adopting the same retention requirements for unpublished works as for published works. In most cases, this would require the

[1]Library of Congress: Opportunities to Improve General and Financial Management (GAO/T-GGD/AIMD-96-115, May 7, 1996).

copyright holder to pay an additional $270 fee if the works were retained beyond 5 years.

Matters for Consideration by the Congress

In view of the various legislative proposals involving PTO and the Copyright Office currently being considered, the Congress may wish to reexamine the fees these agencies charge for particular services. With regard to patent fees, the Congress may wish to consider whether fees for particular services should more nearly reflect the costs of those services. Specifically, the Congress may wish to consider whether (1) the fee differential between large and small businesses should be continued, (2) a larger portion of fees should be tied to the examination process itself, (3) larger fees should apply to those applications requiring more examination time, and (4) applicants who delay the examination process should pay larger fees.

With regard to copyright fees, the Congress may wish to consider whether the Copyright Office should achieve full cost recovery through fees, as it has done with PTO, and, if so, whether fees for particular services should be commensurate with the costs of those services. In addition, to reduce the costs of the copyright process, the Congress may wish to consider whether storage requirements for unpublished copyrighted works should be made the same as those for published works.

Recommendation to the Register of Copyrights

To ensure that fees are not further deteriorated by inflation, GAO recommends that the Register of Copyrights raise fees to account for inflation when given the opportunity to do so.

Agency Comments

GAO provided copies of a draft of this report to the Department of Commerce and the Library of Congress for their review and comment. At the Library's request, GAO also met with Library officials to discuss further the Library's written comments. The comments of the Department and the Library and GAO's responses to those comments are included in appendixes XII and XIII, respectively.

Generally, the Department of Commerce agreed with the information in the draft report, although the Department recommended a number of technical and language changes. The Library strongly disagreed with GAO's discussion of copyright fees and said that the report was incorrect in stating that the Copyright Office had opposed fee increases, did not

acknowledge the role of the Congress in setting copyright fees, and did not sufficiently discuss the impact of fee increases on the Library's collections. The Library also disagreed with a perceived criticism by GAO of the fee increase projections that the Register provided the Senate Committee on the Judiciary in a September 1996 hearing.

Concerning the Department of Commerce's comments, several of the technical changes proposed related to GAO's not having included $2.4 million in miscellaneous fees in the statistics on patent fees. GAO had not included these in the draft report because the source materials indicated such information could not be tied specifically to either patents or trademarks. After reviewing the Department's comments, GAO determined that these fees should have been shown as patent fees and revised the report accordingly. The Department also noted that the cost-accounting information PTO expects to have by December 1997 will greatly enhance the substantive information available with which to analyze potential changes to the current fee structure. Although it is too early to know the outcome of PTO's study, GAO makes the point in this report that, in order to match fees more closely with services, it will be necessary to determine the actual costs of those services. Throughout its comments, the Department emphasized the role that the Congress has played in creating and developing the existing patent fee structure. GAO agrees and believes that this point is made clear in the report. GAO also believes that any policy changes regarding patent fees would require congressional action. For this reason, GAO has included matters for congressional consideration dealing with patent fees.

Concerning the Library's comments regarding the Copyright Office's position on fee increases, GAO added information to the report showing that the Copyright Office has supported the need for fee increases in the past, believes a fee increase is needed currently, and supports proposed legislation that would allow the Register to raise fees to cover the costs of copyright registration and services. GAO continues to believe, however, that the Copyright Office should have adjusted fees to account for inflation in fiscal year 1995 because the increase would have been cost-effective, and Library officials agree that the Register should make adjustments for inflation in the future.

GAO disagrees with the Library's comments that the role of the Congress in setting fees was not adequately discussed in the draft report. To the contrary, GAO's report shows that the Congress has chosen to continue to recover copyright costs through a combination of fees and appropriations.

GAO points out that the Congress has chosen to make the patent and trademark processes self-sustaining. In keeping with this approach, GAO states that the Congress may wish to consider whether the Copyright Office should achieve full cost recovery through fees.

GAO also believes that the report fairly discusses the potential impact of a fee increase on deposits available for the Library's collections. Because the Library (1) has access to all copyrighted materials submitted for registration, (2) is entitled by law to any other materials under copyright protection published in the United States, and (3) rarely takes any unpublished materials, GAO continues to believe that the works available should not decline substantially even if copyright registration applications decline.

Finally, GAO believes that the report accurately portrays the Register's testimony in the September 1996 hearings. However, GAO clarified the report to show that the Register's concern was with the high costs of making the Copyright Office self-supporting within a new, government-owned, intellectual property corporation outside the Library. GAO continues to believe that the fees projected were too high and were not presented in a proper context. For these reasons, GAO believes it is necessary to show its analyses of these projections in the report.

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Abbreviations

CBO	Congressional Budget Office
CPI	Consumer Price Index
GAO	General Accounting Office
GDP	Gross Domestic Product
IPO	Intellectual Property Organization
PTO	Patent and Trademark Office
SBA	Small Business Administration

Introduction

"America's thinkers and creators are at the heart of technological-based economic growth—they are the engine that runs the American economic machine." This statement, from the 1994 strategic plan of the Patent and Trademark Office (PTO), effectively summarizes the importance of advancing, regulating, and administering patents, trademarks, and copyrights—collectively referred to as intellectual property.

The administration has made intellectual property reform a part of its plan to "reinvent" government. The Congress has also recently considered legislation that would affect how intellectual property rights are administered. Some of these proposals would affect the organization and funding of PTO and the Copyright Office. In this regard, the Chairman of the Senate Committee on the Judiciary asked us to review various issues relating to intellectual property fees.

Background

In this country, the federal government is the primary regulator of intellectual property through the grant of patents and the registration of trademarks and copyrights. In this regard—and because federal statutes and regulations provide various economic and procedural benefits concomitant with the grant or registration—these three types of intellectual property are much alike. In other ways, however, they are different. Registering copyrights, for example, takes less time than granting patents or registering trademarks, yet copyrights generally have a much longer life. Trademarks have the shortest original term; however, they can be renewed indefinitely while patents and copyrights cannot. Patents for inventions never brought to market and copyrights for materials never published nevertheless are protected for their entire terms, while a trademark can be lost if it is not used.

Similarly, the roles of the agencies regulating and administering intellectual property differ. Generally, PTO examines patent and trademark applications in great detail to ensure that others have not already applied for a patent on the invention or are not using the trademark in question. The Copyright Office essentially registers any materials that appear to be copyrightable and for which the application is complete. Unlike PTO, the Copyright Office generally does not determine whether some other person has a similar copyright or whether the materials are in the public domain. The differences in the complexities of the procedures followed by the agencies are mirrored by differences in the fees and related expenses.

Patents

A patent is a grant given by a government to an inventor of the right to exclude others for a limited time from making, using, or selling his or her invention. In the United States, the sole granting authority for patents is PTO. The patent process is totally funded through user fees. In fiscal year 1995, PTO issued 114,642 patents.

PTO typically classifies patents as one of four types:

- Over 90 percent of all patent applications are for "utility" patents for inventions that are either a process, machine, manufactured article, or composition of matter, or an improvement to one of these. A second type of patent is the "plant" patent—constituting less than 1 percent of all applications—which is granted for asexually propagated plants. Previously, utility and plant patents had a term of 17 years from the date the patents were issued. For those applications filed after June 7, 1995, however, utility and plant patents will have a nonrenewable term of 20 years from the date the earliest application is filed.
- The third type of patent is the "design" patent, available for a new, original, and ornamental design for an article of manufacture. In fiscal year 1995, design patent applications accounted for about 6.5 percent of all applications filed. Design patents have a nonrenewable term of 14 years from the date of issuance.
- The fourth type of patent is the "reissue" patent, which is granted as a replacement for a patent that was in some way defective. The reissue patent is granted for the unexpired term of the patent it replaced. Reissue patents typically account for less than 1 percent of all applications.

Prior to issuing a patent, PTO examines the application to verify that the patent is indeed new, useful, and non-obvious. In this regard, PTO requires that every patent application include (1) a specification that describes the manner and process of making and using the invention as well as the claim or claims that make the invention patentable; (2) an oath or declaration that the applicant is the original inventor; (3) drawings, where necessary for understanding the nature of the invention; and (4) a filing fee. Additional fees may be necessary during examination, when the patent is issued, and during the term of the patent.

Within PTO, the patent application examination process consists of several progressive phases. An applicant files a patent application with PTO, which reviews the application for accuracy and completeness during a preexamination phase. Following preexamination, the application is assigned, or "docketed," to an examiner within an examination group that

has expertise in a specific field, such as computer systems or biotechnology.

At this point, the examiner begins the process of determining whether the invention is a new and useful process or product that should receive a patent. Usually early in the process, the examiner makes a preliminary decision, or "first action," which may be followed by contacts with the applicant to resolve questions and/or obtain additional information. If PTO decides to issue a patent, termed an "allowance," it informs the applicant and, upon the payment of the necessary fees, issues a patent. The application may be abandoned during any of these stages.

The examination process can be lengthy. During fiscal year 1995, for example, the average "patent pendency"—the period from the date an application is filed until the date it is abandoned by the applicant or a patent is issued by PTO—was 19.8 months. While not required, most inventors use the services of an attorney to help prepare the application and to assist them throughout the examination process, according to PTO.

Trademarks

A trademark is a word, name, symbol, or design used to distinguish or identify the goods or services of a particular merchant or manufacturer from those of others.[1] As with patents, the federal authority for registering trademarks in the United States is PTO, and the trademark process is funded through user fees. In fiscal year 1995, PTO issued 65,662 certificates of registration.

Federal registration does not create a trademark because a trademark can only be acquired by actually using it in association with particular goods or services. However, federal registration does offer the registrant substantial procedural advantages should the trademark owner be faced with an infringement. Once registration has been obtained, the trademark must remain in substantially continuous use in order to be preserved. Trademark registrations have a term of 10 years but can be renewed indefinitely for additional 10-year terms.

An applicant seeking to register a trademark must file an application accompanied by a fee, specimens of the trademark as it is actually used, a drawing of the mark, and various statements describing when the mark was first used and the types of goods and services on which it is used. Trademarks are categorized into various classes, such as toys or clothing,

[1]As used in this report, "trademarks" refers to both trademarks and service marks.

and, if registration for more than one class is sought, the applicant must pay an additional fee for each class.

Once filed, the application is examined by an examining attorney within the Trademark Office of PTO. The attorney verifies that the trademark for which registration is sought is not "confusingly similar" to trademarks for other goods or services. If there is no such similarity and there are no other statutory bars to registration, PTO publishes the trademark and gives members of the public the right to oppose registration if they feel it is confusingly similar to another trademark, even if this other trademark is not already registered. If no problems are identified at this stage, the trademark is registered. Even then, however, it can be challenged at some later date if it is not used properly or if a prior user comes forward.

The trademark process can also be lengthy. In fiscal year 1995, for example, PTO reported that the time between the filing of an application and the registration of the trademark averaged 16.4 to 16.7 months. While applicants may use attorneys in the application process, attorney involvement is not as extensive as with patents, according to PTO officials.

Copyrights

A copyright is a type of intellectual property that protects literary and artistic expression as well as the media where these are displayed. Thus, copyrights are available for works such as books, periodicals, speeches, printed and recorded music, plays, computer software, paintings, sculpture, and motion pictures. Copyright registration in the United States is the exclusive province of the Copyright Office in the Library of Congress. In fiscal year 1995, the Copyright Office registered 609,195 copyrights.

As with trademarks, a copyright is not gained through registration but rather when the work itself is created and reduced to some tangible form of expression. It is the expression of an idea that is copyrightable, not the idea itself. Registration does offer advantages, however, because the copyright owner has better evidence regarding the priority of the claim and is entitled to certain statutory benefits and damages upon infringement that would not otherwise be available. A copyright generally lasts for the (1) author's lifetime plus 50 years for personal works or (2) shorter of 75 years from publication or 100 years from creation for works for hire, anonymous works, or pseudonymous works.

The copyright registration process is simpler than for patents and trademarks. The copyright owner submits an application accompanied by a filing fee and one or two copies of the work, depending on the type. Most applicants, according to Copyright Office officials, do not use an attorney. The examination process is also relatively simple, taking an average of 38 to 83 days in fiscal year 1995 to complete, depending on the type of application. The examiner ensures the application is complete and accurate, that the materials appear to be copyrightable, that the fee is proper, and that the required copies are provided. The Copyright Office does not attempt to verify that others have not already copyrighted the materials or that the materials are in use, have use, or have value.

Objectives, Scope, and Methodology

The Chairman of the Senate Committee on the Judiciary, which is considering various funding and organizational proposals involving PTO and the Copyright Office, requested that we examine several interrelated issues concerning the fees these agencies charge for their services. He asked that we address fees as they relate specifically to patents, trademarks, and copyrights and, where applicable, determine (1) how fees are set for the services provided by PTO and the Copyright Office, (2) the extent to which intellectual property fees are recovering the costs of the services provided, (3) whether different users of the same services pay different fees, (4) whether patent fees encourage or discourage the completeness and accuracy of applications, and (5) the potential effects of increasing copyright fees. We address these issues in chapters on patents, trademarks, and copyrights.

In order to answer these interrelated questions, we determined that we would have to develop data and report on patents, trademarks, and copyrights separately because each has its own laws, application and examination procedures, and fee structure. In this regard, we obtained fee information on patents and trademarks from PTO and copyrights from the Copyright Office. This information included current fee schedules for each form of intellectual property as well as a summary of the fees actually received during fiscal year 1995, the most recent year for which such information was available. To the extent possible, we subdivided the fee receipts by fee type and computed the ratio of each fee type to total fees received.

To determine how fees are set, we reviewed the statutory authority provided to PTO and the Copyright Office as well as the procedures these two agencies had developed for adjusting fees. We reviewed the legislative

history for the statutory fees to determine the reasons for and timing of the various changes. We obtained information from the agencies showing the actual process and data used in the most recent fee adjustments considered.

We also obtained certain workload information from PTO and the Copyright Office, showing the number of patents, trademarks, and copyrights issued or registered or for which the applications were abandoned or rejected during fiscal year 1995. This year was used because of the need for consistency with the fee receipt data discussed above and because in most cases it was the year for which the most recent data were available. In addition, we obtained information the agencies had developed showing the impact of fee increases on applications. For copyrights, we also performed a regression analysis to estimate the association between fee increases and changes in the number of applications while controlling for the influences of other factors that may affect application levels.

We discussed the establishment of fees, fee history, the equity and fairness of fees by applicant and type of application, and the potential impact of adjusting fees with officials from PTO, the Copyright Office, and the intellectual property community. Where possible, we obtained comparable fee data for the Japanese Patent Office and the European Patent Office, the two other large patent offices in the world besides PTO.

We provided a draft of this report to the Department of Commerce and the Library of Congress. These agencies provided written comments, which are included in appendices XII and XIII, respectively, along with our responses. In addition, we met with officials of the Library of Congress after receiving their comments.

Additional information on our scope and methodology is included in appendix I.

While the Overall Patent Process Is Self-Sustaining, Individual Fees Are Not Commensurate With Costs of the Services Provided

By design, the patent process is self-sustaining through a system of fees assessed by PTO for its services. Changes to the law in 1990 and 1991 set patent fees at levels that would recover costs overall and authorized PTO to make annual adjustments for inflation. Despite the self-sufficiency of the patent process overall, however, individual fees are not necessarily commensurate with the costs of the services for which they are assessed. Again, this is by design because (1) the largest fees are paid at the back end of the process, while most costs occur at the front end of the process; (2) large and small entities generally are charged different fees for the same service; (3) costs vary by invention type, while fees do not; and (4) delays caused by the applicants generate more costs than fees. Recognizing these anomalies, PTO is studying the need to make the individual fees more nearly commensurate with the costs of the services provided.

The Patent Process Is Designed to Be Self-Sustaining

Understanding the current patent fee structure first requires an explanation of how the role of patent fees has changed over the past 4 decades. Until recently, patent fees were not intended to cover the costs of PTO's patent process. In 1965, for example, patent and trademark fees were set at a level that recovered 67 percent of PTO's costs. By 1980, however, inflation had reduced the impact of these fees—which had not been revised in the interim—so that they recovered only 27 percent of PTO's operating costs.

In 1980, the Congress revised the patent fee structure. Public Law 96-517, enacted December 12, 1980, provided that fees would be set to recover 50 percent of the costs of PTO's patent process. The law also provided that, like most other industrialized countries, patent fees would be paid not only for application filing and patent issuance but also for the life of most patents through fees known as maintenance fees.

Public Law 97-247, enacted August 27, 1982, further modified the patent fee structure. In addition to raising fees, the law provided that filing, issue, and maintenance fees would be set by statute and could be adjusted every 3 years on the basis of fluctuations in the Consumer Price Index (CPI). The law also provided that large entities would pay statutory fees double the rate of small entities—those entities classified as small businesses by the Small Business Administration (SBA), nonprofit organizations, and individual inventors. The purpose of this reduced fee for small entities was to reduce the impact of fee increases on the inventors most likely to be burdened by higher fees.

Public Law 101-508, enacted November 5, 1990, put PTO on the road to self-sufficiency by increasing statutory patent fees by 69 percent in fiscal year 1991. This increase, known as a "surcharge," was a replacement for appropriations from the general fund. Subsequently, the surcharge was extended through fiscal year 1998 and modified so that the amounts specified by statute are collected. Unlike regular fees, which are treated as offsetting collections for budget purposes and are fully available to PTO, the surcharge fees were to be treated as offsetting receipts and would be available to PTO only to the extent appropriated back by the Congress.

Public Law 102-204, enacted December 10, 1991, authorized PTO to adjust patent fees annually to account for changes in the CPI. Since fiscal year 1993, PTO has been self-sufficient, receiving no appropriations other than those generated by the surcharges. Actually, PTO has not been allowed to use all the fees it has collected. Through fiscal year 1997, the Congress has withheld $142.8 million of the $729.3 million in surcharge fees collected by PTO.

Individual Patent Fees Are Assessed for Specific Services

PTO collects fees for an assortment of patent services. Fiscal year 1995 fee revenues totaled $577.7 million. While these fees were collected under 139 separate fees for specific services, there were three primary types of fees—application filing, patent issuance, and patent maintenance. Table 2.1 summarizes fiscal year 1995 revenues by primary type of fee, and appendix II provides a detailed comparison of these revenues for the individual fees.

Table 2.1: Fiscal Year 1995 Patent Fee Revenues by Fee Type

Fee type	Fiscal year 1995 collections	Percent of total[a]
Filing	$164,932,389	28.5
Issue	109,374,237	18.9
Maintenance	194,668,049	33.7
Other	108,725,154	18.8
Total	**$577,699,829**	**99.9**

[a]Does not total to 100 percent due to rounding.

Source: PTO, GAO computations.

Each applicant pays a filing fee prior to PTO's examination of the merits of the patent application. There are different filing fees for utility, design, plant, and reissue applications, just as there are different fees for large and

small entities. In fiscal year 1995, utility patent applications were dominant, accounting for 89.8 percent of large entities' filing fees and 85.7 percent of small entities' filing fees. Overall, large entities paid $134 million, or 4.3 times the filing fees paid by small entities.

Once PTO decides to allow the grant of a patent, the applicant must pay an issue fee in order to receive the patent. As with application fees, issue fees differ by the type of patent as well as by large and small entities. In fiscal year 1995, utility and reissue patents—which are assessed the same issue fees—accounted for 97.6 percent of all large entities' issue fees and 92.3 percent of all small entities' issue fees. In total, large entities paid $88.7 million, or 4.3 times the issue fees paid by small entities.

Maintenance fees represent the largest single source of patent fee collections, accounting for more than a third of all patent fees collected during fiscal year 1995. The fees are paid at three stages during the life of the patent—at 3.5, 7.5, and 11.5 years into the patent term—with the fees at each stage being progressively higher. Unlike filing and issue fees, maintenance fees are not assessed on design and plant patents. However, large entities pay maintenance fees at twice the rate of small entities.

Maintenance fees constitute some of the largest individual fees, ranging from $960 to $2,900 for large entities and $480 to $1,450 for small entities during fiscal year 1995. In fiscal year 1995, large entities paid $171.2 million, or 7.6 times the amount paid by small entities.

While filing, issue, and maintenance fees are the three primary types of fees—accounting for 81.5 percent of all patent fees during fiscal year 1995—PTO collects other types of patent fees. These include such fees as those paid by an applicant to file and process an international patent application under the Patent Cooperation Treaty, to appeal a PTO decision, to revive an abandoned application, and to obtain an extension in the time to respond to a request or inquiry by PTO during examination. All these fees are different for large and small entities. Other fees, such as those for filing a petition to the Commissioner, make no distinctions in the amount of the fee by the size of the entity.

As noted previously, PTO now has discretion to raise most fees annually to adjust for inflation. PTO has raised fees each year except one since the surcharge was added in fiscal year 1991. Most of the discussion of fees in this chapter is based on fiscal year 1995 data, since this was the most recent year for which complete statistics on fees and patent examination

statistics were available at the time of our review. Appendix III shows the fees in effect during fiscal year 1997.

In commenting on a draft of this report, the Department of Commerce noted that PTO's revenues from filing fees in fiscal year 1995 actually were a greater proportion of total revenues than is normally the case. This was due to the large number of applications submitted prior to the change in the patent term that became effective on June 8, 1995. In fiscal year 1994 and 1996, filing fees, according to PTO, accounted for 27.5 percent and 23.7 percent, respectively, of total fee revenues, compared with 28.5 percent in fiscal year 1995.

Individual Fees Are Not Commensurate With the Costs of the Services Provided

PTO notes that it is essentially an agency that provides services and that its customers pay for these services. At a September 18, 1996, hearing before the Senate Committee on the Judiciary, for example, the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks provided the following testimony:

"The revenues needed to meet the Patent and Trademark Office's expenditures are, as you know, more than fully offset by fees paid by those who use our services and buy our information products. Our workload consists primarily of patent and trademark applications filed by individuals and businesses in the United States and from other countries. These applicants, both domestic and foreign, pay fees for the services they request. Because they pay fees for those services, they expect and deserve prompt and efficient service, and the Patent and Trademark Office must have the flexibility to deliver that service."

While the Commissioner's statement is correct—PTO's expenditures are recovered through fee revenues—this does not mean that individual fees are set to recover the costs of the specific services provided. Actually, patent fees are structured so that in effect (1) successful applicants pay more than unsuccessful applicants, (2) large entities pay more than small entities, (3) applicants with less complicated applications pay the same as those with more complicated applications, and (4) applicants who create delays in the examination process do not pay fees commensurate with the additional pendency caused by those delays.

Successful and Unsuccessful Applicants

While PTO does not have a cost-accounting system capable of determining the costs associated with individual services, PTO officials advised us that most of the costs of the patent process are attributable to application

processing and examination. For fiscal year 1995, for example, they estimated that only 8.6 percent of the costs associated with an individual patent were attributable to the actual issue of the patent and 0.1 percent were attributable to its maintenance. As noted above, however, patent issue fees accounted for 18.9 percent of patent fees collected in fiscal year 1995, while maintenance fees accounted for 33.7 percent.

The dichotomy of front-end costs and back-end revenues causes successful applicants to pay a larger share of costs than unsuccessful applicants because so many applications are abandoned during the examination stage. Of the 186,195 patents issued and applications abandoned during fiscal year 1995, for example, 114,642 patents, or 61.6 percent, were issued and 71,553 applications, or 38.4 percent, were abandoned. Patent pendency—the amount of time PTO spends in examining a patent prior to the patent's being issued or the application's being abandoned—averaged 19.8 months, with 21 months for patents issued and 17.9 months for applications abandoned. None of the applications abandoned will pay an issue or maintenance fee because no patent was issued, even though abandoned applications accounted for more than a third of total pendency.

Large and Small Entities

As noted earlier, large entities typically pay twice the fee that small entities pay for the same service. Because of this difference in the fee itself and because large entities submit more applications and receive more patents, large entities pay a much larger share of overall patent costs. In fiscal year 1995, for example, large entities accounted for 81 percent of the $164.9 million in filing fees, 81.1 percent of the $109.4 million in issue fees, 87.9 percent of the $194.7 million in maintenance fees, 83.2 percent of the $48.4 million in response-time extension fees, 86.8 percent of the $6.2 million in appeal fees, 73.4 percent of the $3 million in abandoned application revival fees, and 85.8 percent of the $9.8 million in Patent Cooperation Treaty filing fees.

These differences in fees are mandated by the law. The Congress added the fee-differential provision in 1982 to reduce the effects of fee increases on small businesses, individual inventors, and nonprofit organizations. However, the differences today are much greater, now that PTO has become totally dependent on fees and the fees themselves are larger. In this regard:

- PTO officials told us that the size of the entity has no bearing on PTO's costs.

- For patent fee purposes, a small entity is a small business with no more than 500 employees, a nonprofit organization, or an individual inventor. The categorization of a small business as defined by the Congress is taken from the criteria SBA uses to determine whether a business qualifies as a small business for its programs. While this employee-based criteria may be useful for SBA, PTO officials said such a definition has little significance when considering the economic impact of fees on a patent applicant. In today's high-tech environment, many businesses that are highly capitalized and profitable have 500 or fewer employees. Similarly, some of the more successful applicants are individual inventors or work for small businesses. As one example, PTO officials noted that one of the most prolific U.S. inventors—whose patents have returned him hundreds of millions of dollars—is considered a small entity for patent fee purposes.
- Patents are the only form of intellectual property for which the size of an entity has a bearing on the fees assessed. There is no such division of fees for either trademarks or copyrights.
- The patent fees themselves are only a portion of the costs of receiving a patent. By definition, a patent represents a new and useful invention or process, and other costs are involved in researching, developing, producing, and marketing these inventions that typically are much greater than would be experienced in obtaining a trademark or copyright registration. In addition, in most cases, attorneys are involved in preparing, filing, and prosecuting the application. While attorneys' fees vary according to the circumstances, an intellectual property guide published by the Minnesota Small Business Assistance Office in 1992 estimated that attorneys' fees could range from $7,500 to $18,000 per application.
- While patent fees have increased significantly since the surcharges were implemented in fiscal year 1992, inventor organizations generally did not believe they were too high or that they were stifling the inventive process. Furthermore, as shown in appendix IV, U.S. patent fees appear to be among the lowest in the industrialized world.

Application Complexity

Patent applications cover a wide range of inventions, and the more complicated inventions generally require the most examination time. As shown in appendix V, the differences in average pendency can vary significantly among examination groups. For those patents issued and applications abandoned during fiscal year 1995, the average pendency was 19.8 months. Among the 17 individual examination groups, however, pendency ranged from a low of 17.4 months for solar, heat, power and fluid engineering devices to a high of 26.2 months for computer systems.

Among the more specialized groupings within the examination groups, pendency can vary even more. For example, average pendency for the grouping of special receptacles, packages, shoes, and shoemaking was 15.8 months, compared with 29.6 months for the grouping of database and file management systems.

While pendency alone is not the only determinant of costs, PTO officials agreed that the more complicated the invention, the more time and expense are attributable to examination. However, the fee schedule makes few provisions for these differences in examination time. One such provision is that, as shown in appendixes II and III, fees for design and plant applications—which tend to be less complicated—are lower than for utility patent applications. There are no differences in filing fees, however, for different types of inventions within the utility patent category, which accounts for over 90 percent of all patent applications.

Applicant Delays

During PTO's examination of a patent application, the examiner makes a preliminary decision on the merits of the application as filed. At such time, the examiner may ask the applicant to respond to questions or provide the examiner with information. This process may occur a number of times. In many cases, PTO cannot complete the examination until the applicant has taken some further action. For example, (1) the applicant may have filed an incomplete application that must be corrected before it can be assigned to an examination group, (2) the applicant may need to answer questions raised by the examiner or provide PTO with additional information, or (3) PTO may have to wait for the payment of a fee before it can proceed with the examination process.

In fiscal year 1995, the time taken by applicants to respond to official PTO "office actions" accounted for 3.7 months, or 18.7 percent, of the total average pendency of 19.8 months. This does not include any pendency that was added because PTO had to process the responses.

There are no additional fees for responses made within 3 months of a PTO office action. However, if the respondent wants to extend the response time, he or she must pay extension fees, as shown in appendixes II and III. If no response is received after 7 months—the 3 "grace" months plus the 4 extension months—the application is considered abandoned.

As shown in appendix II, the extension fees received during fiscal year 1995 were $48.4 million, or 8.4 percent of the total patent fees received. As

noted above, however, the contribution to pendency by the respondents for all patents issued or applications abandoned during fiscal year 1995 was 18.7 percent. While an exact correlation cannot be made, these differences indicate that respondent fees may not be commensurate with the amount of additional pendency they create.

PTO Is Studying the Need for Changes in Patent Fees

PTO officials believe that anomalies exist in the current patent fee structure and have two initiatives under way to address the issue. Under one of these initiatives, PTO is developing a cost-accounting system that will allow it to determine the unit costs of particular services, something it cannot do under its current accounting system. Under the second initiative—which depends to a large extent on the development of cost centers—PTO will attempt to determine whether there is a need for revisions in the fee structure. At the time of our review, PTO officials said the cost study was expected to be completed in December 1997 and that the fee study would be completed at an undetermined time after the cost study.

In its Audit Inspection Plan for Fiscal Years 1997-98, the Department of Commerce's Inspector General noted that "PTO has no uniform process to track the costs of operations within its various program areas...[and] does not have the information that would enable it to develop a fee structure that would accurately establish fees to recover the full costs of operations." In this regard, the Inspector General plans to review PTO's cost-accounting and fee-restructuring efforts, beginning in the third quarter of fiscal year 1997.

Patent Organizations Generally Are Satisfied With Current Fees

Officials from organizations representing patent owners and attorneys agreed that the current fee system is designed to recover costs in the aggregate rather than on a per-service basis. While they recognized that this is in effect a type of subsidy and creates inequities among applicants, they also said that their constituents were generally satisfied with the current system because they (1) know what to expect, (2) are familiar with the fee structure as now designed, and (3) recognize that there is some logic in creating a fee system in which successful applicants bear a greater proportion of the costs. In addition, fees paid to PTO are a relatively small portion of the overall costs of creating a new product, obtaining a patent, and bringing the product to market.

These officials' primary dissatisfaction was not in the fee structure itself but in the Congress's not appropriating all the surcharge fees back to PTO.

They fear that, ultimately, this may keep PTO from being able to manage the patent workload and could lead to higher patent pendency.

The officials from the patent organizations also said that, if the Congress does wish to look at the appropriateness of fees, now is the time. Legislative proposals have been made in both the prior and current sessions of the Congress that would make PTO a wholly-owned government corporation, and questions have been raised concerning how fees would be set and who would set them. The officials believed that these questions should be resolved as a part of the decision on PTO's organizational status.

Conclusions

In many ways, the current patent fee structure is working well. The patent process within PTO has been self-sufficient since fiscal year 1993 and a mechanism is in place to ensure that fees can be raised annually to account for inflation. Furthermore, the applicants appear to be generally satisfied with the current system.

At the same time, however, individual applicants are not necessarily paying their own way because (1) there appears to be little correlation between the service being provided and the cost of that service to PTO and (2) certain applicants pay more than others for the same services. Applicants who abandon their applications, qualify as small entities, submit more complicated applications, and create delays in the examination process are paying less for the same services than other applicants who receive patents, are considered large entities, have less complicated applications, and create fewer delays.

We recognize that there may be policy reasons for having different applicants pay different fees for essentially the same services. Ultimately, the question is whether the Congress wants a closer alignment between the costs of the patent services being provided by PTO and the fees charged for those particular services. While the current system works from the standpoint of overall revenue, individual applicants do not always get what they pay for or pay for what they get.

In order to match fees more closely with services, it will be necessary to know the actual costs of those services. We believe that PTO is taking the correct approach in developing a cost-accounting system that will identify the costs attributable to specific patent services.

Matters for Consideration by the Congress

In considering proposals affecting PTO's funding and organizational status, the Congress may wish to consider whether the current patent fee structure needs to be changed so that fees for particular services more nearly reflect the costs of those services. Specifically, the Congress may wish to consider whether (1) the fee differential between large and small entities should be continued, (2) a larger portion of fees should be tied to the examination process itself, (3) larger fees should be paid for those applications that require more examination time, and (4) applicants who create delays in the examination process should pay for the costs of these delays.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the Department of Commerce generally agreed with the information presented but recommended a number of technical and language changes. Several of the Department's comments concerned our not having included $2.4 million in miscellaneous fees in the statistics on patent fees. We had not included these in the draft report because the source materials indicated such information could not be tied specifically to either patents or trademarks. After reviewing the Department's comments, we determined that these fees should have been shown as patent fees and we revised the report accordingly.

The Department also noted that the cost-accounting information PTO expects to have by December 1997 will greatly enhance the substantive information available with which to analyze potential changes to the current fee structure. Although it is too early to know the outcome of PTO's study, we make the point in this report that in order to match fees more closely with services, it will be necessary to determine the actual costs of those services.

Throughout its comments, the Department emphasized the role the Congress has played in creating and developing the existing patent fee structure. We agree and believe that this point is made clear in the report. We also believe that any policy changes regarding patent fees would require congressional action. For this reason, we have included matters for congressional consideration dealing with patent fees.

The complete text of the Department's comments and our responses to those comments are included in appendix XII.

Trademark Fees Appear to Be Aligned With the Costs of Services

Like the patent process, the trademark process is self-sustaining. However, unlike patents, trademark fees do not vary on the basis of the size of the entity applying, and most fees are paid at the beginning of the process before PTO begins to incur costs. Consequently, while PTO believes some adjustments may be needed, fees in the trademark process appear to be more closely aligned with the costs of services.

The Trademark Process Is Self-Sustaining

The trademark process—accounting for receipts of $68.5 million in fiscal year 1995—now totally depends on fees. However, unlike the patent process—which has been self-sustaining since fiscal year 1993—the trademark process's self-sufficiency began in fiscal year 1983.

In 1965, trademark processing fees were increased, with the most significant change being an increase in the basic application filing fee from $25 to $35. These fees remained in effect until fiscal year 1983. Public Law 97-247, enacted August 27, 1982, authorized PTO to increase trademark fees, this time to a level intended to recover 100 percent of trademark costs. The increase implemented was substantial, with the basic filing fee raised to $175 per application. The law also provided that trademark fees could be used only to fund trademark operations.

Since fiscal year 1983, trademark processing fees have remained essentially stable, with only some limited changes in the basic filing fee. In October 1986, PTO raised the basic fee to $200 but in April 1989 lowered it back to $175. In December 1991, PTO again raised the basic filing fee to $200, and Public Law 103-179, enacted December 3, 1993, raised it to $245. This fee is still in effect.

PTO now has the authority to raise trademark processing fees and service fees annually within the CPI increase of the previous year. In practice, PTO does not always exercise its authority to adjust fees. Appendix VI shows trademark processing and service fees received during fiscal year 1995, and appendix VII shows the fees in effect in fiscal year 1997. The only fees raised over this period were two service fees, which together accounted for less than 0.5 percent of revenues in fiscal year 1995.

Trademark Fees Appear to Be Commensurate With the Costs of Services

Trademark fees are more streamlined and less complicated than patent fees. In total, there are 19 separate trademark processing fees and 18 separate service fees. Unlike patents, these fees do not differ by the size of the entity applying to register the trademark, no additional fees are levied when the trademark is approved for registration, and no maintenance fees must be paid during the term of the trademark. A renewal fee of $300 per class is paid only if the trademark owner wishes to extend the trademark for additional 10-year terms.

According to PTO officials, trademark fee revenues are tied closely to the trademark examination process. As shown in table 3.1 and appendix VI, the trademark process generated $68.5 million in fee revenues during fiscal year 1995. Of this total, 94.5 percent came from trademark processing fees. More specifically, 71.5 percent of all revenues came from one fee—the basic application filing fee.

Table 3.1: Fiscal Year 1995 Trademark Fee Revenues

Fee type	Fiscal year 1995 collections	Percent of total
Application filing	$48,975,658	71.5
Other processing	15,769,278	23.0
Service	3,741,860	5.5
Total	**$68,486,796**	**100.0**

Source: PTO, GAO computations.

As with the patent process, PTO does not have a cost-accounting system capable of determining the costs of particular services. However, PTO officials estimated that about 76 percent of its overall trademark costs were related to the examination process. They also told us that there is not a significant difference in the amount of time spent examining different types of trademarks. In fiscal year 1995, the average time spent in examining all trademark applications prior to registration ranged from 16.4 to 16.7 months.

The situation in which successful patent applicants pay more than unsuccessful applicants does not exist in the trademark process because, as noted above, there are no separate issue or maintenance fees for trademarks. Thus, even though 42,214 trademark applications were abandoned in fiscal year 1995, compared with 75,372 applications that "matured to registration," all applicants paid the same basic filing fee in advance. Unlike patents, there are no separate fees tied to late responses

to PTO requests for additional information. However, PTO officials said that, because of the nature of the application, there are fewer occasions to request additional information during the processing of a trademark application. Unlike patent regulations, trademark regulations do not require acceptance of incomplete applications and, as a result, PTO does not accept and process incomplete trademark applications.

PTO officials believe that fees generally are appropriately allocated to the services provided. They also said, however, that they were aware of some individual areas in which the fees probably were not adequate. For example, they said that the fees for actions such as filing an appeal ($100 per class) were likely to be well below PTO's costs of handling these actions. As with patents, PTO officials believed that the two studies now under way to develop a new cost-accounting structure and to reassess fees—as discussed in chapter 2—will provide better information on how well specific fees are tied to specific services and what fees may need to be adjusted.

The representatives from the trademark community with whom we discussed fees generally had no problems with the current fee structure. They believed, like PTO, that the costs were adequately tied to the services provided.

Conclusions

Trademark fees are more streamlined than patent fees. There are fewer individual fees, the size of the entity applying has no effect on the fee paid, most fees are tied to the application examination, and most fees are paid in advance of the examination. There are no separate fees for registration or maintenance, and the processing time does not appear to vary significantly by type of application. There also is less reason for PTO to request additional information on problem applications.

For these reasons, we do not believe fees in the trademark process raise the issues we identified in the patent process, in which certain applicants pay more than others for the same services. However, we believe that PTO should continue its efforts to (1) develop a cost-accounting system that will allow it to identify the costs attributable to specific trademark services and (2) reassess the fees paid to determine whether they are commensurate with the costs of the services provided.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the Department of Commerce generally concurred with the information we provided on trademark fees. As suggested by the Department, we added information regarding PTO's proposed cost-accounting study. The complete text of the Department's comments and our responses to those comments are included in appendix XII.

Copyright Fees Do Not Recover the Costs of Copyright Services

Unlike the patent and trademark process, the copyright process is not self-sustaining, and copyright fees have been adjusted infrequently since the 1950s. The current fees have been in effect since 1991 and have not been adjusted for inflation as permitted by law. Most applicants pay a one-time fee of $20, or about half the cost the Copyright Office incurs to register a copyright.

Copyright Office officials have supported the need for a fee increase in the past and currently support proposed legislation that would give the Register of Copyrights the discretion to raise fees to reflect the fair cost of registering copyrights and providing services. However, the Register testified against a 1996 proposal to make the Copyright Office self-sustaining through fees within a new, government-owned, intellectual property corporation because she believed fees would increase too much, applications for registration would decrease, and the Library's collections could suffer as a result. Recently, the Register said that she favors making the copyright process self-sustaining within the Library, joining others—including the Library itself and the Congressional Budget Office—that believe a fee increase would be advantageous.

On a related matter, the Copyright Office is now required to retain unpublished works at no additional cost for the life of the copyright, while most published works are retained for only 5 years. Because these unpublished works are rarely used, the full-term storage represents an unnecessary cost to the government.

Copyright Fees Have Been Adjusted Infrequently

The Congress has taken a different direction with copyright fees than with patent and trademark fees. The copyright process, once self-sustaining, now depends on appropriations to supplement the revenues obtained through fees.

For most of the first half of this century, the copyright process was self-sustaining. The Copyright Act of 1909 required applicants to pay a fee for the registration of a copyright, and from 1909 to 1942, copyright fee receipts exceeded expenditures. Over the next 5 years, however, revenues lagged behind costs.

In 1948, Public Law 501 increased the basic copyright registration fee from $2 to $4. Consequently, fee receipts once again exceeded expenditures in 1949. From 1950 until 1965, however, the ratio of fees to expenditures dropped to 63 percent as costs increased while fees remained at the same

level. Under Public Law 89-297 in 1965, the Congress again increased the basic registration fee, this time to $6 per claim. At the time, the Copyright Office estimated that this new fee would result in a recovery of 80 percent of its costs. By 1976, however, inflation had reduced the value of copyright fees, and the Congress, under Public Law 94-553, raised the basic fee to $10, with the increase actually effective in 1978.

Over a decade later, as the value of the basic registration fee again had been eroded by inflation, the Congress increased the fee to $20 under the Copyright Fees and Technical Amendments Act of 1989 (P.L. 101-318, July 3, 1990). This act also authorized the Register of Copyrights to adjust fees for inflation every 5 years, beginning in fiscal year 1995. Fiscal year 1991 was the last year in which the copyright registration fees were raised because the Acting Register of Copyrights did not make an inflation adjustment in fiscal year 1995.

Copyright fees traditionally have had a simpler structure than patent and trademark fees because there are fewer fees and the fees themselves are much smaller. As shown in appendix IX, the basic fee for most purposes is $20. Unlike patent fees, copyright fees do not differ according to the size of the entity submitting the application. In addition, there are no issue fees, no maintenance fees, and no renewal fees except on some older copyrights. In addition to the statutory fees, the Register of Copyrights sets fees by regulation for special services, such as providing optional full-term storage of published materials.

Current Copyright Fees Are Not Sufficient to Recover the Costs of Services

Copyright fees do not cover the costs of copyright services, either in total or by type of service. We found that the (1) gap between total copyright fee revenues and costs exceeds $10 million a year, (2) gap varies widely by type of service, and (3) Copyright Office has not raised fees to cover the effects of inflation. Copyright Office officials said that they have supported the need for a fee increase that would move toward recovering the full costs of copyright registration and services.

Costs Exceed Fees by $10 Million a Year

The Copyright Office obtains funding from three sources: (1) copyright fees, (2) appropriations from the general fund, and (3) cost reimbursements taken from royalties collected and disbursed by its Licensing Division and the Copyright Arbitration Royalty Panel. In fiscal year 1995, the Copyright Office collected $14.6 million in fees, received

$10 million in appropriations, and recovered $2.4 million in costs from royalty fees.

As shown in table 4.1, the reliance on appropriations has been relatively constant at the $9 million to $10 million range since 1991, the year in which the most recent fee increase became effective. Appendix IX shows the sources of all copyright fee revenues for fiscal year 1995.

Table 4.1: Comparison of Copyright Fee Revenues and Copyright Office Appropriations, Fiscal Years 1990 Through 1995

Fiscal year	Fee revenues	Appropriations
1990	$ 7,696,295	$12,999,000
1991	$11,805,298	$10,258,000
1992	$13,858,690	$ 9,161,791
1993	$14,499,140	$ 9,511,000
1994	$14,136,233	$ 9,411,000
1995	$14,611,332	$10,045,000

Source: Copyright Office.

The Gap Between Fees and Costs Varies by Type of Service

The disparity between the fees applicants pay and the costs of the services they receive can be considerable on a per-service basis. This is because some types of copyrights cost more to register than others, while the basic registration fee is a "one-size-fits-all" fee, and because some service fees are set below costs.

Although the basic copyright registration fee is $20, an analysis of costs by the Copyright Office indicates that the average cost of a copyright registration in fiscal year 1995 was $36.53, or about 183 percent of the basic fee. As shown in table 4.2, however, the average cost by type of work varied from a high of $59.60 for a "mask" work—or a work imbedded in a semiconductor chip—to a low of $28.32 for literary serials.

Table 4.2: Comparison of Copyright Costs and Fees by Type of Copyright

Category	Fiscal year 1995 cost	Current fee
Literary monograph registration	$40.83	$20
Literary serial registration	$28.32	$20
Performing arts registration	$38.81	$20
Visual arts registration	$36.25	$20
Sound recording registration	$41.15	$20
Mask works registration	$59.60	$20

Source: Copyright Office.

Fees for other services were also far below the costs incurred by the Copyright Office in providing such services during fiscal year 1995. For example:

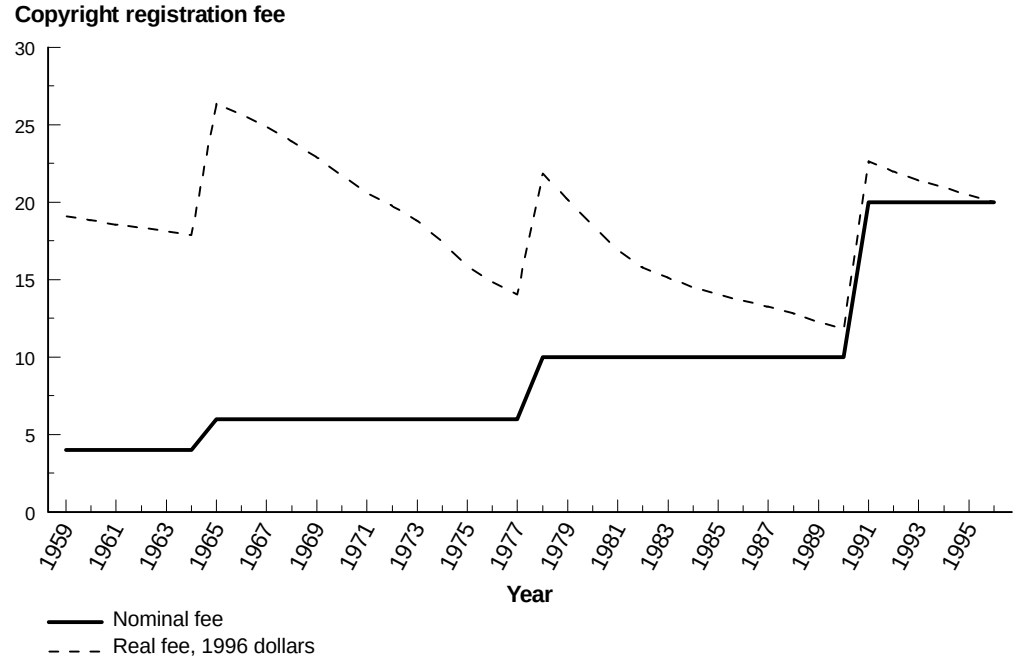
- While the Copyright Office charged a fee of $20 per hour for conducting reference searches of its records, these searches cost an average of $70.02 per hour, or 3.5 times the fee.
- The average cost of recording a document was $77.81, or about 3.9 times the $20 fee.
- Copyright renewals cost an average of $43.37 each, or more than twice the $20 fee.

Some high-cost services require no separate fee at all. For example, the Copyright Office does not charge an additional fee for requesting additional information from applicants submitting incorrect or incomplete applications, even though these applications require more time to process. As of October 1996, approximately 15 percent of all copyright applications required correspondence with the applicant to complete the registration process. Copyright Office officials estimated the cost of each correspondence at approximately $45.

The Copyright Office Has Not Raised Fees to Account for Inflation

One of the problems associated with statutory fees is that their value tends to be eroded by inflation if several years transpire between fee increases. Thus, the effective fee actually declines during the period. This has been the case with copyright fees, as shown in figure 4.1. Using 1996 dollars as the base and adjusting the nominal fee for the effects of inflation, we found that the "real" fee decreased in value significantly during each period a particular fee was in effect.

Figure 4.1: Comparison of Real and Nominal Copyright Fees,1959 Through 1996



Note: To measure fees in inflation-adjusted dollars, the nominal fee was adjusted using the implicit price deflator for Gross Domestic Product, based on 1996 dollars.

Source: Copyright Office, GAO computations.

As noted above, Public Law 101-318 established a new copyright fee schedule to account for the inflation that had occurred since the fees were last raised in 1978. The act also granted the Register of Copyrights the authority to adjust the fee schedule by regulation every 5 years to account for any inflation as determined by the CPI. The first such adjustment was to be effective in 1995. In March 1994, an internal Copyright Office task force recommended that basic registration fees not be increased, and the Acting Register of Copyrights at the time followed this recommendation. By statute, the next such increase cannot be made until 2000, and, according to Copyright Office officials, any increase at that time would consider only CPI increases since 1995.

According to the report prepared by the task force, the increase in the CPI was 16.53 percent from 1989 to 1993, the most recent 4-year period for which data were available. This would have allowed basic registration fees to increase from $20 to $23.30. The task force estimated that, if fees were raised by the maximum allowable, the additional revenues would be $1 million to $2.1 million in the first year after the fee increase, depending on the extent to which applications decreased. After deducting $493,866 in increased costs that would be incurred by the Copyright Office, the task force estimated that the fee increase would have potentially increased the Copyright Office's income by $529,590 in the first year of the fee increase. Costs associated with the fee increase would decrease to an estimated $102,869 in the second year and $69,877 in the third year.

In determining the additional costs and other problems of raising fees, the task force cited the expenses and difficulty of publicizing the new fees to copyright registrants; the administrative burden of dealing with claims that arrive with insufficient fees; the necessity of modifying the automated accounting system; the difficulty that Copyright Office staff and applicants would have working with an odd fee, and the expenses associated with drafting, printing, and distributing new applications and circulars reflecting a fee increase. The task force also believed that applications would decline, offsetting to some extent any gains made by raising the fees.

In summary, the task force believed that the additional revenues were not worth the anticipated problems and expenses and recommended against raising the basic registration fee. The task force did recommend that certain service fees, such as those for special handling and full-term storage of published works, be increased. The Acting Register of Copyrights raised fees for special services, but opted against increasing copyright registration fees.

We disagree with the Acting Register's decision not to raise fees for several reasons. First, most of the costs would have declined after the first year. However, overall fee income would have continued to increase each year, depending on the effect any such increase would have had on applications. Second, the revised fees would have formed the basis for any fee adjustments for inflation in the future.

Third, while there may be administrative costs associated with publicizing fee increases, processing claims accompanied by insufficient remittances, and modifying paperwork and automation systems to reflect fee increases,

the task force did not study ways that these costs and difficulties might be mitigated. For example, Copyright Office officials could not explain why they would have to take elaborate measures to publicize the fee increase and to reprint all publications. They said they did not consider as an option simply rejecting any application with an insufficient fee, nor did they consider listing a toll-free number or Internet address on the application where an applicant could obtain information on the appropriate fee, rather than listing the fee itself.

We also do not agree with the task force's concern that an "odd fee" would be difficult for the applicants or the Copyright Office staff to understand and use. Apparently, the concern is that the $20 fee is easy for applicants to remember and easy for Copyright Office employees to work with to ensure that the proper amounts are paid. However, fees of amounts other than in increments of $5 or $10 are common in commerce and government operations. For example, the applicant must pay postage in dollars and cents on each package he or she submits to the Copyright Office. In addition, millions of taxpayers and Internal Revenue Service employees work with many different rates and fees each year in computing income taxes. Furthermore, assuming that the concerns over odd fees were justified, the Copyright Office could have mitigated the effect by raising its basic registration fee to the even-dollar amount of $23. This increase would have been within the CPI ceiling.

Copyright Office Officials Believe a Fee Increase Is Needed

Copyright Office officials told us that they believe a fee increase is needed and support "the goal of moving toward full cost recovery of fee services." They noted that this was not the same as saying that all Copyright Office operations should be paid for through fees because they believe there are costs of the Copyright Office—such as public information, rulemaking, development of national and international copyright policy, preparation of reports and studies for the Congress, administration of section 407 mandatory deposit provisions, and the special funding for the International Copyright Institute—that should be supported by appropriations, not fees.

The Register of Copyrights told us that she supports the language in H.R. 672 and S. 506, which would authorize the Register to adjust fees to reflect the fair cost of registering copyrights and providing services. She said that she had supported similar provisions in H.R. 1861, which passed the House of Representatives but not the Senate during the past session of the Congress. The Copyright Technical Amendments Act, H.R. 672, was passed

by the House of Representatives on March 18, 1997. The Copyright Clarifications Act of 1997, S. 506, was introduced in the Senate on March 20, 1997.

The Register also said that the Copyright Office plans to initiate a fee study to determine (1) what costs are attributable to the copyright process and (2) what fees would be necessary to recover costs in total and by type of service. As of March 1997, Copyright Office officials were deciding on the scope of the study but had not yet begun the study. The Register said that the study would probably be conducted by outside consultants.

The Copyright Office Has Opposed Becoming Self-Sustaining Outside the Library

In September 1996, the Senate Committee on the Judiciary held a hearing on S. 1961, which, among other things, would have made the Copyright Office self-sustaining through fees within a new, government-owned, intellectual property corporation. The Register of Copyrights testified against this proposal, providing three interrelated reasons for her opposition. First, to cover the increased costs, fees would have to be raised to an unacceptably high level. Second, the increased fees would lead to a decrease in copyright registrations. Third, the decrease in registrations would reduce the number of free works submitted to the Copyright Office for consideration by the Library of Congress for its collections.

While we take no position on S. 1961—which was not passed during the last session of Congress—we disagree with the fee increases and application decreases projected by the Register in her testimony. Our disagreement is based on the Copyright Office's own study. We also believe that, even if decreases in applications had occurred, they would not have created a harmful shortage of works available for the Library's collections. Recently, the Register said that she believes the copyright process could be made self-sustaining within the Library by increasing fees to about twice their current level.

Costs Would Not Increase as Projected

In September 1996, the Senate Committee on the Judiciary held a hearing on S. 1961, the Omnibus Patent Act of 1996. This legislative proposal would establish an Intellectual Property Organization (IPO) that comprised essentially the existing PTO and the Copyright Office. This proposal also called for the Copyright Office to become self-sustaining through copyright fees. During the hearing, the current Register of Copyrights testified that the basic copyright registration fee would have to be raised

"five-fold" to the $100 range in order for the Copyright Office to be self-sustaining outside the Library of Congress. The Register said that such an increase would place a substantial burden on copyright owners, especially those companies that own hundreds or thousands of works.

We reviewed the analysis the Copyright Office used to support the cost estimates cited in the Senate hearing. We found that, as shown in appendix X, the Copyright Office's analysis considered 12 scenarios involving the Copyright Office's organizational status, costs, and projected applications. The fivefold increase in fees presented at the hearing was the worst-case, least-likely scenario studied. According to the Copyright Office's analysis, the other scenarios would have required raising the basic registration fee from the current $20 to a new fee of $41 to $89 for the first year. Fees would have increased the second year because the Copyright Office estimated that registrations would continue to decrease.

We question many of the costs projected in the worst-case scenario presented by the Copyright Office for several reasons:

- The costs in general were based on the Copyright Office's becoming an independent and self-sustaining agency, while S. 1961—the bill under discussion at the hearings—proposed including it within the IPO, which would also include patent and trademark offices.
- Facilities were estimated to cost $5 million. This was based on the Copyright Office's obtaining new space at a cost of $32 per square foot. It did not consider leaving the Copyright Office in its current space, where the facilities are government-owned and there is no rental cost to the Copyright Office.
- The analysis projected a significant decrease in applications, as discussed below, but did not consider that costs might be lower if applications were fewer.
- The analysis assumed that the Copyright Office would have to acquire new computer equipment and services rather than continue to use those now shared with the Library of Congress or share such equipment and services with the other offices within the new IPO.

In discussions with Copyright Office officials concerning the analysis, they said that the figures were "loose, educated guesses" and that the scenario used was never intended to be characterized as the most-likely scenario but rather as one example. They acknowledged that expenses would be somewhat lower than shown in their analysis if the Copyright Office were combined with the existing PTO because some costs could be shared. They

also acknowledged that fee increases appear to have a greater impact on some types of works than others. They advised against our attempting to use the estimates they developed in projecting the level of fees that would be necessary to make the Copyright Office self-sufficient.

Applications May Not Decrease as Projected

The Copyright Office maintains that fee increases adversely affect applications for copyright registration. However, both the Copyright Office's and our own analyses indicate that any such decrease in registrations is not likely to be large.

The aforementioned March 1994 report prepared by the Copyright Office task force studying the need for adjusting fees for inflation also said that fee increases are a disincentive to registration. As evidence, the report stated that, when the registration fees were doubled in January 1991, applications decreased 3.3 percent from the 1990 level after they had risen an average of 4.1 percent per year for the 8 years prior to the fee increase.

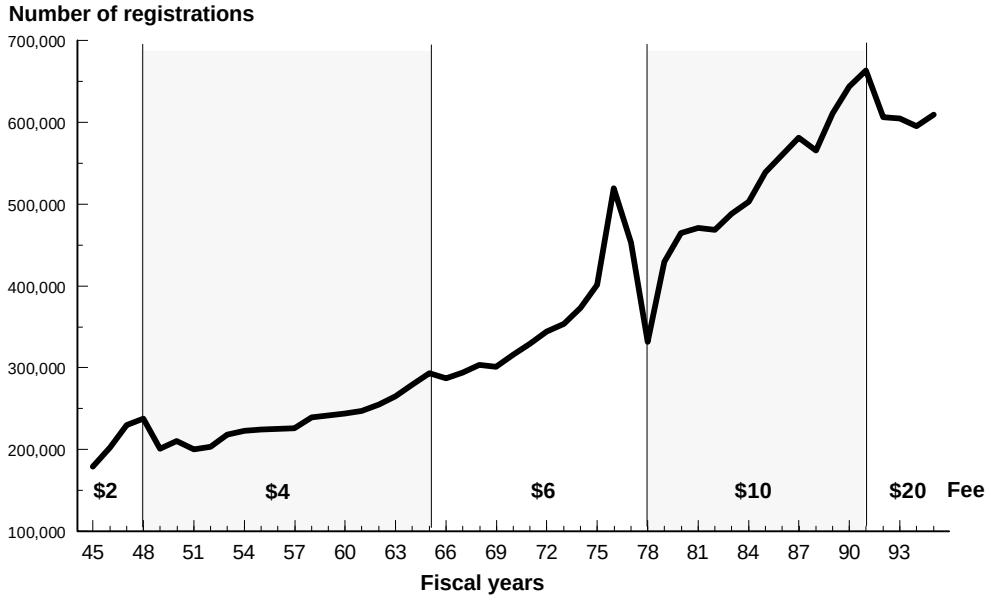
The Register of Copyrights also raised concerns about the effect of a fee increase on applications during her September 18, 1996, testimony on S. 1961. She said that reorganizing the Copyright Office into a self-sustaining entity outside of the Library of Congress could mark the end of a vital and meaningful registration and deposit system. She reasoned that historical experience has shown that registrations decrease whenever fees are increased. Because the fee increase would likely be the largest such increase on record, the Copyright Office anticipated that many individual copyright owners would choose not to register their works and that businesses would register fewer works. This would result in a diminished and less valuable public database on works of authorship, making it more difficult for users to determine who owns what rights at a particular time. In addition, there would be a decrease in Library-deposit copies of works received through copyright registrations.

In examining the support for the Register of Copyright's concerns over decreasing registrations, we again looked at the Copyright Office's preliminary analysis supporting the projected fivefold increase in fees. We found that this scenario was based on estimates that registrations would decrease 30 percent in the first year after the fee increase and an additional 15 percent in the second year.

As with the estimates on cost increases, these estimates of registration decreases are questionable for various reasons. For example, decreases of

the magnitude projected have never occurred in the more than 100 years for which the Copyright Office has data. As shown in figure 4.2, it is common for copyright registrations to decrease in the years following a fee increase. However, the decrease has usually been small, and registrations have tended to rebound in subsequent years.

Figure 4.2: Copyright Registrations, 1945-95



Note: Superimposed dollar amounts are the basic registration fees in effect during each period. Fiscal year 1976 includes 15 months of data because of the transitional fiscal year.

Source: Copyright Office.

We also question the Copyright Office's projections because, while they consider only the overall impact on registrations, Copyright Office officials agree that some types of registrations are more likely to be affected than others. Following the 1991 fee increase, for example, applications for registration decreased significantly for some types of works but remained stable for others. Applications for performing arts decreased about 14 percent from fiscal years 1990 to 1992, while applications for visual arts

and motion pictures increased by about 1 percent during the same period. In addition, the number of copyright registrations for unpublished works decreased by about 10 percent over the period, while the number of registrations for published works declined by about 3 percent.[1]

The Copyright Office's projections also do not consider the effect on registrations of changes in internal reporting procedures and other legislative changes that accompanied past fee increases. We found that these other factors can affect the number of applications received and registered. For example, when the registration fee was increased from $6 to $10 in fiscal year 1978, Copyright Office records show about a 27-percent reduction in the number of copyright registrations from the previous year.[2] However, Copyright Office officials told us that they reported only 11 months of registrations for fiscal year 1978 rather than a full 12 months.

Similarly, after the registration fee was increased to $20 on January 1, 1991, the number of applications for copyright registration decreased by about 3 percent in fiscal year 1991 and an additional 5 percent in fiscal year 1992. However, the fee increase was not the only change affecting applications. For example, the Copyright Office initiated group registration for serial issues during mid-1991. In doing so, all issues of a weekly, biweekly or monthly serial published within a 3-month period could be registered on one application at a fee of $10 per issue. According to Copyright Office officials, this reduced the number of serial registrations by an unknown amount. In addition, renewal of copyrights became automatic beginning in 1992. This accounted largely for the substantial and steady drop in renewal registrations beginning that year. While registration applications overall decreased by almost 10 percent from fiscal years 1990 to 1995, applications for these categories decreased by about 34 percent and 39 percent, respectively.

Because there may be other, external issues—such as the onset of a recession in 1991—that could have affected applications beyond changes in copyright fees, we developed a model that allowed us to examine the association between fee changes and the number of applications while controlling for the effects of other factors. As discussed in appendix XI, we found that the association between fee increases and application

[1]The number of applications for unpublished and published works received for these years could not be obtained because the Copyright Office does not record a work's publication status until it is registered.

[2]The Copyright Office was unable to provide the number of applications received on an annual basis prior to fiscal year 1986.

decreases is likely to be small—about a 0.1-percent decrease in applications for a 1-percent increase in fees. However, a regression model of this type is best at estimating such associations for relatively small changes in explanatory factors. We also found that there may be an even greater correlation between applications and the level of economic activity, as measured by the Gross Domestic Product.

Fee Increases Should Not Affect Library Collections

We also question whether there would be any harmful results to the government even if copyright applications did decrease in reaction to a fee increase. The economic benefits of copyright registration primarily are those that pass to the copyright holder. In fact, the United States is one of the few countries in the world that even has a government agency registering copyrights. The primary advantage of registration in this country is that it provides official evidence of the copyright and provides statutory damages against infringement. Thus, if a person decides not to register a copyright, that person assumes the risk of loss.

According to the testimony of the Register of Copyrights in the Senate hearing on S. 1961, one of the Copyright Office's primary concerns regarding a decrease in copyright registrations is that such a decrease might limit the works available at no cost for the collections of the Library of Congress. However, because of other provisions in existing legislation, a decline in registrations should have no significant impact. Section 407 of the Copyright Act requires that all material under copyright protection and published in the United States on or after March 1, 1989, be deposited with the Copyright Office within 3 months of publication.[3] These deposits are available to the Library of Congress for its collections or for exchange or transfer to another library. Thus, published documents must be submitted to the Copyright Office and made available for the Library's collections even if copyright registration is not sought. If documents are not submitted as required by law, the Register of Copyrights can demand that the deposits be made and subject those not complying to fines and penalties.

Although section 407 does not apply to unpublished material, the Library of Congress seldom selects unpublished material for its collections, with the exception of genealogy studies. According to Copyright Office officials, the Library of Congress selected less than 100 of the approximately 254,000 unpublished documents that were registered in fiscal year 1995.

[3]Material first published before Mar. 1, 1989, is subject to the deposit requirement if it was published in the United States with notice of copyright.

Copyright Office Officials Now Agree That the Copyright Process Could Be Self-Sustaining Within the Library

In March 1997, the Register of Copyrights told us that she supports the concept of making the copyright process self-sustaining within the Library. She said that the fivefold increase in fees cited in the Senate hearing in September 1996 was indeed a worst-case scenario. However, she had presented this scenario because she viewed the proposal being considered at that time as entailing the separation of the Copyright Office from the Library of Congress. She believed that such a move would create uncertainties, such as whether new space would have to be obtained, whether a new computer system would have to be purchased, and how other services the Library and the Copyright Office now provide for each other at no charge would be provided in the future. Thus, the Register believed that it was necessary to show the potential fee increases that might be required under the most costly circumstances.

The Register of Copyrights said that, in retrospect, she recognizes that the costs and fee increases associated with self-sufficiency would be lower than those presented at the September hearing, particularly if the Copyright Office is left in the Library of Congress, as is now being proposed. While the Copyright Office does not have a current estimate on what would be required to make it self-sustaining, the Register said that any fee increase would at a minimum have to replace the approximately $10 million the Copyright Office now receives in appropriations each year. She believed this would probably require fees that are about twice the current level.

In subsequent discussions on a draft of this report, the Register said that she had not intended to say that she believed the Copyright Office itself should be self-sustaining. Rather, she believed that it should charge fees for services that reflect the costs of those services to the Copyright Office. She said that certain costs—such as those of the Copyright Acquisitions Division—were not directly related to the copyright process; thus, they should not be paid for by registrants but are more appropriately covered through appropriations.

The Register also said in our March 1997 discussion that, if the copyright process is to be made self-sustaining though fees, these fees should be commensurate with the services provided. As we have previously noted, the costs of individual services vary widely, while most users of these services pay the same fee. In addition, the Copyright Office and the Library now provide services to each other that are not necessarily related to their primary missions and for which they are not reimbursed. For example, the Library provides numerous computer services to the Copyright Office at

no charge, while the Copyright Office obtains works that were requested by the Library for its collections but not available through the copyright registration process, also at no charge. The Register believed that the fee study now being planned by the Copyright Office will address this issue.

Other Studies Support a Fee Increase

Other recent studies of the Copyright Office support the need for a fee increase. In a 1996 report on the results of a management review of the Library of Congress contracted by GAO,[4] Booz-Allen & Hamilton recommended that the Library of Congress focus its efforts on increasing revenues. As one means for doing so, the report recommended that the Library pursue full recovery of copyright costs. The report stated that fully recovering copyright registration costs offers significant opportunities, both in terms of additional revenues and the relative ease of implementation. It further stated that the Copyright Office meets two key criteria for pursuing a fee-based service. First, there are opportunities for significant revenues. Second, the Copyright Office has been subject to full cost recovery in the past, so a precedent has been established. To accomplish full cost recovery, the report recommended that the Copyright Office establish a differentiated fee structure based on the cost of the services provided. According to the study, to achieve full cost recovery, proposed registration fees would range from a low of $10 for group serials to a high of $38 to $420 for mask works.

In October 1996, an internal management report of the Copyright Office prepared by a senior Library of Congress official at the request of the Librarian recommended that the Copyright Office recover relevant fees for services. However, the report also recommended that the Congress continue appropriating funds for activities, such as "service to the Congress," that are not associated with registration services and that the Library of Congress continue to provide its support to the Copyright Office in exchange for the value of the copyright deposits made available to the Library's collections. Unlike the Booz-Allen report, the Library of Congress recommended establishing either a single fee for all copyright registrations or a separate fee only for visual arts works based on the costs of these works. If the fee difference for visual arts is less than $5 per registration, however, the report recommended establishing only a single fee. While the Library of Congress's report concluded that a $35 registration fee would bring fees and costs into balance the first year, it also concluded that a $40

[4]GAO contracted with Booz-Allen & Hamilton, Inc. to conduct a general management review of the Library in order to meet time frames specified by congressional requesters. Booz-Allen's findings are summarized in Library of Congress: Opportunities to Improve General and Financial Management (GAO/T-GGD/AIMD-96-115, May 7, 1996).

registration fee is desirable to account for the effects of inflation in subsequent years.

Although the Library of Congress's report recognized that a fee increase may harm the Library's collections through reduced applications, it stated that any decline in registrations would likely occur primarily in unpublished works and in relatively low-value published works. It acknowledged that the demand provisions of section 407 of the Copyright Act would still apply to published works and that more works might come from that source than from applications for copyright registrations.

Recently, the Congressional Budget Office (CBO) noted that the fee structure of the Copyright Office could be revised to generate more revenue and reduce the need for appropriations. In its March 1997 publication entitled Reducing the Deficit: Spending and Revenue Options, CBO offered the option of requiring the Copyright Office to achieve full cost recovery as a deficit-reduction measure. According to the report, achieving full cost recovery would require that the copyright registration fee be increased to about $35 or $40 per application.

The CBO estimate of what would be required to make the Copyright Office self-sufficient is similar to that advanced by the Register of Copyrights—about double the current level. On the basis of our regression analysis, we believe that the decrease in applications from doubling the fees would be about 10 percent in the year following the fee increase. However, as noted earlier, models such as the one we developed tend not to be as highly predictive at such a high level of increase.

In discussions we had with intellectual property organizations, they either opposed or had no opinion regarding any fee increase for copyrights. None of them provided independent estimates regarding what effect any such increase would have on applications or the ability of copyright holders to benefit from their works.

Eliminating the Requirement to Retain Copies of Unpublished Works Could Reduce Costs

We identified one additional area that, while not essential to a decision to raise fees, nevertheless affects other costs to the government of the copyright process and the ability of fees to recover those costs. This is the requirement in the law to retain copies of unpublished works for the full term of the copyright.

Currently, the law requires that the Copyright Office retain unpublished works for the life of the copyright, which for most works is the author's life plus 50 years. Copyright Office officials told us that they estimate this term to average 125 years. In contrast, the law requires that published materials that are not selected by the Library of Congress be retained for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. The Register and the Librarian have set the period at 5 years for all works except visual arts, which are kept for 10 years. If a copyright owner wants to extend the retention period for a published work to cover storage costs for the full length of the copyright term, the Copyright Office assesses a $270 fee.

As a result of the requirement in the law, millions of unpublished works could be stored for up to 125 years at taxpayer expense, while few published works will be stored longer than 5 years. Copyright Office officials told us that in some cases—as with audio tapes, for example—the copy is usually of no use after a few years because of the natural deterioration of the medium. They also said that they are rarely called upon to extract copies of unpublished works from storage, either by the Library of Congress or by the holder of the copyright.

As a result of the difference in the retention requirements, published works consume far less storage space than unpublished works, even though published works represent the majority of items that are registered by the Copyright Office each year. Approximately 3.3 million unpublished works were placed in storage at either the Landover Storage Facility or the Washington National Records Center between 1978[5] and the end of fiscal year 1996. In addition to this material, other unpublished works have been microfilmed and are currently stored at the Copyright Office itself. In contrast, as of December 1996, only an estimated 1.8 million published works were in storage at the two facilities, and most of these were still within the statutory 5-year retention period. From fiscal year 1990 through fiscal year 1995, the Copyright Office received only 85 requests for extended storage for published works.

The annual cost of the space utilized by the Copyright Office at its Landover Storage Facility is $230,000 and is paid for by the Library of Congress. The space utilized by the Copyright Office at the Washington National Records Center is owned by the General Services Administration and leased to the National Archives. Although neither the Copyright Office

[5]Prior to 1978, musicals and dramas were the only categories of unpublished works that were eligible for copyright registration.

nor the Library of Congress pays for this storage space, it is a cost of the copyright process and a cost to the government. National Archives officials estimated the fiscal year 1996 costs to be $1.56 per cubic foot. Given the number of cubic feet being utilized by the Copyright Office, the fiscal year 1996 cost was approximately $97,000.

Conclusions

Unlike PTO, the Copyright Office is not self-sustaining through fees, and the government provides about $10 million in appropriations each year to cover the costs not recovered by copyright fees or reimbursements from royalties. While the law permits the Copyright Office to raise fees periodically to account for the effects of inflation, it chose not to do so in fiscal year 1995, the last year it had the authority to do so. Thus, most fees remain at the level they were in 1991. Copyright Office officials have supported the need for a fee increase that will match fees to the costs of services more closely and are planning a study to show what type of fee structure may be needed.

In September 1996, the Copyright Office objected to a proposal that it become self-sustaining within a new, government-owned, intellectual property corporation because of fears that the increased costs would lead to a burdensome increase in fees, a dramatic decrease in registrations, and a reduction in free materials available for the Library of Congress's collections. These concerns are not supported by the Copyright Office's own study used for the testimony. In March 1997, the Register of Copyrights agreed that the fivefold increase in fees she had projected was a worst-case scenario and was based on the uncertainties the Copyright Office would face if removed from the Library of Congress. She said that the copyright process could become self-sustaining—probably with fees about double those now in effect—under the current organizational structure.

Recently, other organizations—including the Library itself—have recommended fee increases. CBO has included an option for making the Copyright Office self-sustaining in its deficit-reduction package for fiscal year 1998, estimating that fees would need to be raised to a range of $35 to $40.

The requirement in the law that unpublished works be retained for the life of the copyright adds to the costs of the copyright process without providing any measurable benefits to either the copyright holders or the government. We believe that by eliminating this requirement, reducing the

retention period, or requiring a fee for extended retention, the additional costs to the government could be reduced or recovered.

Matters for Consideration by the Congress

To promote greater consistency in the government's approach to assessing intellectual property fees and to eliminate the need for appropriated funds in the copyright process, the Congress may wish to consider requiring that the Copyright Office achieve full cost recovery through fees. The Congress may also wish to consider setting copyright fees that are more closely aligned with the services for which they are assessed. In addition, to reduce the costs of the copyright process, the Congress may wish to consider making the storage requirements for unpublished copyrighted works the same as those for published works.

Recommendation to the Register of Copyrights

To reduce the deterioration of fees by inflation, we recommend that the Register of Copyrights raise fees to account for inflation as provided by law, when given the opportunity to do so.

Agency Comments and Our Evaluation

We provided copies of a draft of this report to the Library of Congress for its review and comment. At the Library's request, we also met with Library officials to discuss the Library's written comments further. The comments of the Library and our responses to those comments are included in appendix XIII.

The Library strongly disagreed with our discussion of copyright fees and said that the report was incorrect in stating that the Copyright Office had opposed fee increases, did not acknowledge the role of the Congress in setting copyright fees, and did not sufficiently discuss the impact of fee increases on the Library's collections. In addition, the Library disagreed with a perceived criticism of the fee increase projections that the Register provided to the Senate Committee on the Judiciary in a September 1996 hearing.

Concerning the Library's comments regarding the Copyright Office's position on fee increases, we added information to the report showing that the Copyright Office has supported the need for fee increases in the past, believes a fee increase is needed currently, and supports proposed legislation that would allow the Register to raise fees to cover the costs of copyright registration and services. We continue to believe, however, that the Copyright Office should have adjusted fees for inflation in fiscal year

1995 because the increase would have been cost-effective, and Library officials agree that the Register should make inflation adjustments in the future.

We disagree with the Library's comments that the role of the Congress in setting fees was not adequately discussed in the draft report. To the contrary, our report shows that the Congress has chosen to continue to recover copyright costs through a combination of fees and appropriations. We point out that the Congress has chosen to make the patent and trademark processes self-sustaining. In keeping with this approach, we state that the Congress may wish to consider whether the Copyright Office should achieve full cost recovery through fees.

We also believe that the report fairly discusses the potential impact of a fee increase on deposits available for the Library's collections. Because the Library (1) has access to all copyrighted materials submitted for registration, (2) is entitled by law to any other materials under copyright protection published in the United States, and (3) rarely takes any unpublished materials, we continue to believe that the works available should not decline substantially even if copyright registration applications decline.

Finally, we believe that the report accurately portrays the Register's testimony in the September 1996 hearings. However, we clarified the report to show that the Register's concern was with the high costs of making the Copyright Office self-supporting within a new, government-owned, intellectual property corporation outside the Library. We continue to believe that the fees projected were too high and were not presented in a proper context. For these reasons, we believe it is necessary to show the Copyright Office's analyses of these projections in the report.

Objectives, Scope, and Methodology

On July 15, 1996, the Chairman of the Senate Committee on the Judiciary requested that we review the manner by which the U.S. agencies grant or register patents, trademarks, and copyrights and use fees in providing services. He asked that we address a series of interrelated questions regarding how fees are set, whether they recover costs, and how they are used in the granting and registration processes.

In subsequent discussions with the Committee staff, we agreed that we would determine (1) how fees are set for the services provided by the Patent and Trademark Office (PTO) and the Copyright Office, (2) the extent to which fees are recovering the costs of the services provided, (3) whether different users of the same services pay different fees, (4) whether patent fees encourage or discourage the completeness and accuracy of applications, and (5) the potential effects of increasing copyright fees. Our report discusses these issues in individual chapters on patents, trademarks, and copyrights.

We conducted our work by reviewing available records and interviewing knowledgeable officials from PTO, the Copyright Office, and intellectual property organizations. While we developed both historical and current information on fees, the information we developed on costs was primarily for fiscal year 1995, the last year for which complete data were available at the time of our review. The cost and fee data used in this report are based on data provided by PTO and the Copyright Office. Except as specifically noted, we did not independently verify these data.

For the first objective, we determined the extent to which fees are established by law and by the agencies themselves, the rationale used by the agencies in updating fees, and the process used by the agencies in determining individual fees. We also reviewed the legislative history regarding intellectual property fees to determine the evolution of the current fee structures. In addition, we reviewed economic literature related to fee increases.

For the second objective, we determined, to the extent that data were available, the relationship between the costs and fees charged for particular services provided by PTO and the Copyright Office during fiscal year 1995. We then used these data to show the extent to which the agencies were recovering their costs in total and for individual services. To the extent possible, we also compared U.S. fees and costs with those in Europe and Japan; however, the only data that were sufficient for use in

our report involved patents. We did not independently verify the information obtained.

For the third objective, we identified differences in fees for various types of services and users of those services. Specifically, we determined the costs and benefits of (1) charging large and small entities different fees for the same patent services, (2) charging a fee for extended storage of published copyrighted materials while storing unpublished copyrighted materials for the life of the copyright at no additional cost, and (3) charging a maintenance fee for patents and a renewal fee for trademarks but no additional fees to keep a copyright current.

For the fourth objective, we identified areas in which applicants' errors and delays added to examination time and determined the extent to which fees were assessed for such delays. Our work for this objective primarily involved a comparison of patent extension fees with the applicant delays in the patent process as identified in our July 1996 report entitled Intellectual Property: Enhancements Needed in Computing and Reporting Patent Examination Statistics (GAO/RCED-96-190, July 15, 1996). To perform this analysis, we updated the data to include fiscal year 1995.

For the fifth objective, we identified areas where fees could be increased, and to the extent possible, the potential effects of these increases. This work primarily involved copyright fees because the patent and trademark processes were already self-sufficient. For copyrights, we identified potential revenues possible under various fee scenarios. To determine the potential effects of fee increases on copyright applications, we also performed a regression analysis showing the effect of fees on applications since 1986.

During the course of our review, we also developed information on fiscal year 1995 patent pendency using information from PTO's automated Patent Application Location and Monitoring system. This system contains background information on each patent application as well as a "prosecution history" that shows the date when key actions were taken on each application during examination. We used these data to prepare a report to the Chairman entitled Intellectual Property: Comparison of Patent Examination Statistics for Fiscal Years 1994 and 1995 (GAO/RCED-97-58, Mar. 13, 1997). These data were also used in appendix V of this report.

We provided a draft of this report to the Department of Commerce and the Library of Congress. These agencies provided written comments, which are included in appendixes XII and XIII, respectively, along with our responses. In addition, we met with officials of the Library of Congress after receiving their comments.

We performed our work from July 1996 through April 1997. We conducted our work in accordance with generally accepted government auditing standards.

Patent Fee Income Received by PTO in Fiscal Year 1995

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
Patent filing fees (large entity)				
101	Basic filing fee—utility	$730.00	$120,038,488	20.78
102	Independent claims in excess of 3	76.00	3,158,166	0.55
103	Claims in excess of 20	22.00	3,478,376	0.60
104	Multiple dependent claim	240.00	270,234	0.05
105	Surcharge—late filing fee or oath or declaration	130.00	4,482,760	0.78
106	Design filing fee	300.00	1,689,243	0.29
107	Plant filing fee	490.00	110,544	0.02
108	Reissue filing fee	730.00	361,458	0.06
109	Reissue independent claims over original patent	76.00	1,475	0.00
110	Reissue claims in excess of 20 and over original patent	22.00	27,708	0.00
Total patent filing fees (large entity)			**$133,618,452**	**23.13**
Patent filing fees (small entity)				
201	Basic filing fee—utility	$365.00	$26,825,569	4.64
202	Independent claims in excess of 3	38.00	795,620	0.14
203	Claims in excess of 20	11.00	1,115,036	0.19
204	Multiple dependent claim	120.00	58,893	0.01
205	Surcharge—late filing fee or oath or declaration	65.00	983,792	0.17
206	Design filing fee	150.00	1,389,035	0.24
207	Plant filing fee	245.00	69,820	0.01
208	Reissue filing fee	365.00	70,525	0.01
209	Reissue independent claims over original patent	38.00	77	0.00
210	Reissue claims in excess of 20 and over original patent	11.00	5,570	0.00
Total patent filing fees (small entity)			**$31,313,937**	**5.41**
Total patent filing fees			**$164,932,389**	**28.54**
Patent issue fees (large entity)				
142	Utility issue fee	$1,210.00	$86,656,572	15.00
143	Design issue fee	420.00	1,914,960	0.33
144	Plant issue fee	610.00	88,905	0.02
Total patent issue fees (large entity)			**$88,660,437**	**15.35**
Patent issue fees (small entity)				

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
242	Utility issue fee	$605.00	$19,122,870	3.31
243	Design issue fee	210.00	1,521,095	0.26
244	Plant issue fee	305.00	69,835	0.01
Total patent issue fees (small entity)			**$20,713,800**	**3.58**
Total patent issue fees			**$109,374,237**	**18.93**
Patent maintenance fees (large entity)				
181	Maintenance fees received without explanation		–$33,400	–0.01
183	Due at 3.5 years	$960.00	55,182,178	9.55
184	Due at 7.5 years	1,930.00	68,797,276	11.91
185	Due at 11.5 years	2,900.00	46,720,870	8.09
186	Surcharge—late payment within 6 months	130.00	488,236	0.08
Total patent maintenance fees (large entity)			**$171,155,160**	**29.62**
Patent maintenance fees (small entity)				
283	Due at 3.5 years	$480.00	$9,388,440	1.63
284	Due at 7.5 years	965.00	8,871,525	1.54
285	Due at 11.5 years	1,450.00	3,956,618	0.68
286	Surcharge—late payment within 6 months	65.00	312,893	0.05
Total patent maintenance fees (small entity)			**$22,529,476**	**3.90**
Patent maintenance fees regardless of entity				
187	Surcharge—late payment is unavoidable	$640.00	$49,435	0.01
188	Surcharge—late payment is unintentional	1,500.00	933,978	0.16
Total patent maintenance fees regardless of entity			**$983,413**	**0.17**
Total patent maintenance fees			**$194,668,049**	**33.69**
Patent extension fees (large entity)				
115	Extension for response within first month	$110.00	$4,516,399	0.78
116	Extension for response within second month	370.00	8,464,762	1.47
117	Extension for response within third month	870.00	25,087,326	4.34
118	Extension for response within fourth month	1,360.00	2,167,206	0.38
Total patent extension fees (large entity)			**$40,235,693**	**6.97**
Patent extension fees (small entity)				
215	Extension for response within first month	$55.00	$920,697	0.16
216	Extension for response within second month	185.00	1,630,439	0.28
217	Extension for response within third month	435.00	4,901,266	0.85

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
218	Extension for response within fourth month	680.00	681,674	0.12
Total patent extension fees (small entity)			**$8,134,076**	**1.41**
Total patent extension fees			**$48,369,769**	**8.38**
Patent appeal fees (large entity)				
119	Notice of appeal	$280.00	$3,650,465	0.63
120	Filing a brief in support of an appeal	280.00	1,418,636	0.25
121	Request for oral hearing	240.00	311,503	0.05
Total patent appeal fees (large entity)			**$5,380,604**	**0.93**
Patent appeal fees (small entity)				
219	Notice of appeal	$140.00	$535,305	0.09
220	Filing a brief in support of an appeal	140.00	230,844	0.04
221	Request for oral hearing	120.00	52,330	0.01
Total patent appeal fees (small entity)			**$818,479**	**0.14**
Total patent appeal fees			**$6,199,083**	**1.07**
Patent revival fees (large entity)				
140	Petition to revive unavoidably abandoned application	$110.00	$32,058	0.01
141	Petition to revive unintentionally abandoned application	1,210.00	2,140,180	0.37
Total patent revival fees (large entity)			**$2,172,238**	**0.38**
Patent revival fees (small entity)				
240	Petition to revive unavoidably abandoned application	$55.00	$33,161	0.01
241	Petition to revive unintentionally abandoned application	605.00	753,189	0.13
Total patent revival fees (small entity)			**$786,350**	**0.14**
Total patent revival fees			**$2,958,588**	**0.52**
Statutory disclaimer fees				
148	Statutory disclaimer (large entity)	$110.00	$592,634	0.10
248	Statutory disclaimer (small entity)	55.00	155,266	0.03
Total statutory disclaimer fees			**$747,900**	**0.13**
Other patent processing fees				
111	Extension of patent term	$1,030.00	$41,075	0.01

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
112	Requesting publication of Statutory Invention Registration prior to examiner's action	840.00	31,153	0.01
113	Requesting publication of Statutory Invention Registration after examiner's action	1,690.00	83,377	0.01
122	Petitions to the commissioner, unless otherwise specified	130.00	1,853,081	0.32
126	Submission of an information disclosure statement	210.00	2,546,562	0.44
138	Petition to institute a public use proceeding	1,390.00	5,480	0.00
139	Non-English specification	130.00	94,419	0.02
145	Certificate of correction	100.00	565,172	0.10
147	Filing a request for reexamination	2,320.00	862,997	0.15
Total other patent processing fees			**$6,083,316**	**1.06**
Patent Cooperation Treaty application fees (large entity)				
956	International Preliminary Examining Authority—U.S.	$660.00	$244,906	0.04
958	International Searching Authority—U.S.	730.00	60,825	0.01
960	PTO is not International Searching Authority or International Preliminary Examining Authority	980.00	737,127	0.13
962	Claims meet Patent Cooperation Treaty Article 33(1)-(4)—International Preliminary Examining Authority—U.S.	92.00	13,448	0.00
964	Claims—extra independent (over 3)	76.00	352,804	0.06
966	Claims—extra total (over 20)	22.00	618,319	0.11
968	Claims—multiple dependent	240.00	406,912	0.07
970	For filing with European Patent Office or Japanese Patent Office search report	850.00	5,600,936	0.97
154	Oath or declaration after 20 or 30 months from priority date	130.00	414,495	0.07
Total Patent Cooperation Treaty application fees (large entity)			**$8,449,772**	**1.46**
Patent Cooperation Treaty application fees (small entity)				
957	International Preliminary Examining Authority—U.S.	$330.00	$50,287	0.01
959	International Searching Authority—U.S.	365.00	26,682	0.00
961	PTO is not International Searching Authority or International Preliminary Examining Authority	490.00	341,685	0.06

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
963	Claims meet Patent Cooperation Treaty Article 33(1)-(4)—International Preliminary Examining Authority—U.S.	46.00	3,280	0.00
965	Claims—extra independent (over 3)	38.00	45,385	0.01
967	Claims—extra total (over 20)	11.00	98,098	0.02
969	Claims—multiple dependent	120.00	49,357	0.01
971	For filing with European Patent Office or Japanese Patent Office search report	425.00	703,191	0.12
254	Oath or declaration after 20 or 30 months from priority date	65.00	76,082	0.01
Total Patent Cooperation Treaty application fees (small entity)			**$1,394,047**	**0.24**
Total Patent Cooperation Treaty application filing fees			**$9,843,819**	**1.70**
Patent Cooperation Treaty processing fees				
150	Patent Cooperation Treaty transmittal fee	$210.00	$3,345,943	0.58
151	Patent Cooperation Treaty search fee—no U.S. application	640.00	388,476	0.07
152	Supplemental search per additional invention	180.00	252,300	0.04
153	Patent Cooperation Treaty search fee —prior U.S. application	420.00	3,666,851	0.63
155	Patent Cooperation Treaty—late payment fee	Variable	15,512	0.00
156	English translation—after 20 months	130.00	36,341	0.01
157	Patent Cooperation Treaty—designation confirmation fee	Variable	49,368	0.01
159	Overpayments—Patent Cooperation Treaty		46,103	0.01
190	Preliminary examination fee fee—International Searching Authority was the U.S.	460.00	3,478,187	0.60
191	Preliminary examination fee— International Searching Authority not the U.S.	690.00	694,321	0.12
192	Additional invention—International Searching Authority was the U.S.	140.00	76,692	0.01
193	Additional invention—International Searching Authority not the U.S.	240.00	1,360	0.00
Total Patent Cooperation Treaty processing fees			**$12,051,454**	**2.08**
Total Patent Cooperation Treaty application and processing fees			**$21,895,273**	**3.78**
Patent service fees				

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
561	Printed copy of patent w/o color, regular service	$3.00	$2,961,287	0.51
562	Printed copy of patent w/o color, overnight delivery to PTO box or overnight fax	6.00	7,279	0.00
563	Printed copy of patent w/o color, ordered via expedited mail or fax, expedited service	25.00	6,617	0.00
564	Printed copy of plant patent, in color	12.00	20,215	0.00
565	Copy of utility patent or Statutory Invention Registration, with color drawings	24.00	834	0.00
566	Certified or uncertified copy of patent application as filed, regular service	12.00	923,499	0.16
567	Certified or uncertified copy of patent application as filed, expedited local service	24.00	437,799	0.08
568	Certified or uncertified copy of patent-related file wrapper and contents	150.00	156,046	0.03
569	Certified or uncertified copy of document, unless otherwise provided	25.00	175,902	0.03
570	For assignment records, abstract of title and certification, per patent	25.00	305,648	0.05
571	Library service	50.00	200	0.00
572	List of U.S. patents and Statutory Invention Registrations in subclass	3.00	192	0.00
573	Uncertified statement regarding status of maintenance fee payments	10.00	6,770	0.00
574	Copy of non-U.S. document	25.00	69,128	0.01
575	Comparing and certifying copies, per document, per copy	25.00	52,118	0.01
576	Additional filing receipt, duplicate or corrected due to applicant error	25.00	20,578	0.00
577	Filing a disclosure document	10.00	219,570	0.04
578	Local delivery box rental, per annum	50.00	4,948	0.00
579	International type search report	40.00	955	0.00
580	Self-service copy charge, per page	0.25	3,965,313	0.69
581	Recording each patent assignment, agreement or other paper, per property	40.00	7,844,060	1.36
583	Publication in official gazette	25.00	3,175	0.00
584	Labor charge for services, per hour or fraction thereof	30.00	51,897	0.01
585	Unspecified other services		170,326	0.03
586	Retaining abandoned application	130.00	27,975	0.00
587	Handling fee for incomplete or improper application	130.00	26,155	0.00

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
588	Automated Patent Search System text terminal session time, per hour	40.00	806,589	0.14
589	Handling fee for withdrawal of Statutory Invention Registration	130.00	582	0.00
590	Patent coupons	3.00	1,023,519	0.18
591	Automated Patent Search System text terminal session time at the PTDLs, per hour	15.00	1,644	0.00
592	Automated Patent Search System—Classified Search and Retrieval terminal session time, per hour	50.00	–9,295	0.00
Total patent service fees			**$19,281,525**	**3.33**
Patent attorney enrollment fees				
609	Admission to examination	$300.00	$628,080	0.11
610	Registration to practice	100.00	110,027	0.02
611	Reinstatement to practice	15.00	1,650	0.00
612	Copy of certification of good standing	10.00	1,317	0.00
613	Certificate of good standing—suitable for framing	20.00	250	0.00
615	Review of decision of Director, Office of Enrollment and Discipline	130.00	1,040	0.00
616	Regrading an examination	130.00	15,355	0.00
Total patent attorney enrollment fees			**$757,719**	**0.13**
Miscellaneous service fees				
607	Establish deposit account	$10.00	$710	0.00
608	Service charge for below minimum balance	25.00	79,232	0.01
617	Processing returned checks	50.00	19,045	0.00
618	Computer records at costs		954,665	0.17
	Unspecified patent fees		1,378,329	0.24
Total miscellaneous service fees			**$2,431,981**	**0.42**
Total patent fees[a]			**$577,699,829**	**99.98**

[a]Percent does not equal to 100 because of rounding.

Source: Patent and Trademark Office; GAO's computations.

Patent Fees for Fiscal Year 1997

Type of fee and fee code	Fee title	Fee per service
Patent filing fees (large entity)		
101	Basic filing fee—utility	$770.00
102	Independent claims in excess of 3	80.00
103	Claims in excess of 20	22.00
104	Multiple dependent claim	260.00
105	Surcharge—late filing fee or oath or declaration	130.00
106	Design filing fee	320.00
107	Plant filing fee	530.00
108	Reissue filing fee	770.00
109	Reissue independent claims over original patent	80.00
110	Reissue claims in excess of 20 and over original patent	22.00
Patent filing fees (small entity)		
201	Basic filing fee—utility	385.00
202	Independent claims in excess of 3	40.00
203	Claims in excess of 20	11.00
204	Multiple dependent claim	130.00
205	Surcharge—late filing fee or oath or declaration	65.00
206	Design filing fee	160.00
207	Plant filing fee	265.00
208	Reissue filing fee	385.00
209	Reissue independent claims over original patent	40.00
210	Reissue claims in excess of 20 and over original patent	11.00
Patent issue fees (large entity)		
142	Utility issue fee	1,290.00
143	Design issue fee	440.00
144	Plant issue fee	650.00
Patent issue fees (small entity)		
242	Utility issue fee	645.00
243	Design issue fee	220.00
244	Plant issue fee	325.00
Patent maintenance fees (large entity)		
183	Due at 3.5 years	1,020.00
184	Due at 7.5 years	2,050.00
185	Due at 11.5 years	3,080.00
186	Surcharge—late payment within 6 months	130.00
Patent maintenance fees (small entity)		
283	Due at 3.5 years	510.00
284	Due at 7.5 years	1,025.00

(continued)

Type of fee and fee code	Fee title	Fee per service
285	Due at 11.5 years	1,540.00
286	Surcharge—late payment within 6 months	65.00
Patent maintenance fees regardless of entity		
187	Surcharge—late payment is unavoidable	680.00
188	Surcharge—late payment is unintentional	1,600.00
Patent extension fees (large entity)		
115	Extension for response within first month	110.00
116	Extension for response within second month	390.00
117	Extension for response within third month	930.00
118	Extension for response within fourth month	1,470.00
Patent extension fees (small entity)		
215	Extension for response within first month	55.00
216	Extension for response within second month	195.00
217	Extension for response within third month	465.00
218	Extension for response within fourth month	735.00
Patent appeal fees (large entity)		
119	Notice of appeal	300.00
120	Filing a brief in support of an appeal	300.00
121	Request for oral hearing	260.00
Patent appeal fees (small entity)		
219	Notice of appeal	150.00
220	Filing a brief in support of an appeal	150.00
221	Request for oral hearing	130.00
Patent revival fees (large entity)		
140	Petition to revive unavoidably abandoned application	110.00
141	Petition to revive unintentionally abandoned application	1,290.00
Patent revival fees (small entity)		
240	Petition to revive unavoidably abandoned application	55.00
241	Petition to revive unintentionally abandoned application	645.00
Statutory disclaimers		
148	Statutory disclaimer (large entity)	110.00
248	Statutory disclaimer (small entity)	55.00
Other patent processing fees		
111	Extension of term of patent under 1.740	1,090.00
111	Initial application for interim extension under 1.790	410.00
111	Subsequent application for interim extension under 1.790	210.00
112	Requesting publication of Statutory Invention Registration—prior to examiner's action	900.00

(continued)

Type of fee and fee code	Fee title	Fee per service
113	Requesting publication of Statutory Invention Registration—after examiner's action	1,790.00
122	Petitions to the Commissioner, unless otherwise specified	130.00
126	Submission of an information disclosure statement	230.00
138	Petition to institute a public use proceeding	1,470.00
139	Non-English specification	130.00
145	Certificate of correction	100.00
147	Filing a request for reexamination	2,460.00
146	Filing a submission after final rejection (large entity)	770.00
246	Filing a submission after final rejection (small entity)	385.00
149	Per additional invention to be examined (large entity)	770.00
249	Per additional invention to be examined (small entity)	385.00
Patent Cooperation Treaty application fees (large entity)		
956	International Preliminary Examining Authority—U.S.	700.00
958	International Searching Authority—U.S.	770.00
960	PTO is not International Searching Authority or International Preliminary Examining Authority	1,040.00
962	Claims meet Patent Cooperation Treaty Article 33(1)-(4)—International Preliminary Examining Authority—U.S.	96.00
964	Claims—extra independent (over 3)	80.00
966	Claims—extra total (over 20)	22.00
968	Claims—multiple dependent	260.00
970	For filing with European Patent Office or Japanese Patent Office search report	910.00
154	Oath or declaration after 20 or 30 months from priority date	130.00
Patent Cooperation Treaty application fees (small entity)		
957	International Preliminary Examining Authority—U.S.	350.00
959	International Searching Authority—U.S.	385.00
961	PTO is not International Searching Authority or International Preliminary Examining Authority	520.00
963	Claims meet Patent Cooperation Treaty Article 33(1)-(4)—International Preliminary Examining Authority—U.S.	48.00
965	Claims—extra independent (over 3)	40.00
967	Claims—extra total (over 20)	11.00
969	Claims—multiple dependent	130.00
971	For filing with European Patent Office or Japanese Patent Office search report	455.00
254	Oath or declaration after 20 or 30 months from priority date	65.00
Patent Cooperation Treaty processing fees		
150	Patent Cooperation Treaty transmittal fee	230.00
151	Patent Cooperation Treaty search fee—no U.S. application	680.00

(continued)

Type of fee and fee code	Fee title	Fee per service
152	Supplemental search per additional invention	200.00
153	Patent Cooperation Treaty search fee—prior U.S. application	440.00
156	English translation—after 20 months	130.00
190	Preliminary examination fee—International Searching Authority was the U.S.	480.00
191	Preliminary examination fee—International Searching Authority not the U.S.	730.00
192	Additional invention—International Searching Authority was the U.S.	140.00
193	Additional invention—International Searching Authority not the U.S.	260.00
Patent service fees		
561	Printed copy of patent w/o color, regular service	3.00
562	Printed copy of patent w/o color, delivery to PTO box or overnight fax	6.00
563	Printed copy of patent w/o color, ordered via expedited mail or fax, expedited service	25.00
564	Printed copy of plant patent, in color	12.00
565	Copy of utility patent or Statutory Invention Registration with color drawings	24.00
566	Certified or uncertified copy of patent application as filed, regular service	15.00
567	Certified or uncertified copy of patent application as filed, expedited local service	30.00
568	Certified or uncertified copy of patent—related file wrapper and contents	150.00
569	Certified or uncertified copy of document, unless otherwise provided	25.00
570	For assignment records, abstract of title and certification, per patent	25.00
571	Library service	50.00
572	List of U.S. patents and Statutory Invention Registrations in subclass	3.00
573	Uncertified statements re status of maintenance fee payments	10.00
574	Copy of non-U.S. Document	25.00
575	Comparing and certifying copies, per document, per copy	25.00
576	Additional filing receipt, duplicate or corrected due to applicant error	25.00
577	Filing a disclosure document	10.00
578	Local delivery box rental, per annum	50.00
579	International type search report	40.00
580	Self-service copy charge, per page	0.25
581	Recording each patent assignment, agreement or other paper, per property	40.00
583	Publication in official gazette	25.00
584	Labor charge for services, per hour or fraction thereof	30.00
585	Unspecified expedited services	At cost
586	Retaining abandoned application	130.00
587	Handling fee for incomplete or improper application	130.00

(continued)

Type of fee and fee code	Fee title	Fee per service
588	Automated Patent Search System—text terminal session time, per hour	40.00
589	Handling fee for withdrawal of Statutory Invention Registration	130.00
590	Patent coupons	3.00
592	Automated Patent Search System—Classified Search and Image Retrieval terminal session time, per hour	50.00
Patent attorney enrollment fees		
609	Admission to examination	40.00
610	Registration to practice	100.00
611	Reinstatement to practice	40.00
612	Copy of certification of good standing	10.00
613	Certificate of good standing—suitable for framing	20.00
615	Review of decision of Director, Office of Enrollment and Discipline	130.00
616	Regarding an examination	225.00
Miscellaneous service fees		
607	Establish deposit account	10.00
608	Service charge for below minimum balance	25.00
617	Processing returned checks	50.00
618	Computer records	At cost

Source: PTO.

Comparison of Patent Fees for PTO, Japanese Patent Office, and European Patent Office

PTO	Fees to obtain patent[a]	Fees to maintain patent	Total fees
Large entity	$2,060	$6,150	$8,210
Small entity	$1,030	$3,075	$4,105
Japanese Patent Office	$985	$10,230	$11,215
European Patent Office			
One country	$4,942	$2,121	$7,063
Eight countries[b]	$6,546	$71,047	$77,593
All countries	**$8,608**	**$117,515**	**$126,123**

Notes: Foreign currency exchange rates based on Oct. 1996 average. Fees as used in this table are the fees paid to the agency and do not include external fees such as attorneys' fees. The European Patent Office has reported that its fees are scheduled to be adjusted downward on July 1, 1997.

[a]The fees to obtain a patent include all basic fees from filing application to grant of patent.

[b]In the European Patent Office, additional fees must be paid for each country designated. The average number of member states designated for each European Patent Office application was 7.9 in 1995. Thus, we made our calculation using the fees for the eight member states that were designated most often in 1995.

Source: PTO; GAO's calculations.

Comparison of Patent Pendency by Examination Group for Patents Issued or Applications Abandoned During Fiscal Year 1995

Group	Description	Number of applications	Average pendency in months
1100	General, metallurgical, inorganic, petroleum and electrical chemistry and engineering	12,835	19.2
1200	Organic chemistry drug, etc.	9,473	19.3
1300	Specialized chemical industries, etc.	8,635	19.4
1500	High polymer chemistry, plastics, coating, photography, etc.	14,079	19.4
1800	Biotechnology	12,605	21.6
2100	Industrial electronics, physics, etc.	10,232	20.9
2200	Special laws administration	5,429	24.4
2300	Computer systems, etc.	8,701	26.2
2400	Packages, cleaning, textiles, and geometrical instruments	8,006	18.9
2500	Electronic/optical systems, etc.	15,431	19.6
2600	Communications, measuring, testing and lamp/discharge group	13,463	22.1
2900	Special designs	16,134	19.4
3100	Handling and transporting media	9,121	17.5
3200	Material shaping, tools, etc.	9,132	17.7
3300	Medical technology, sporting goods, etc.	12,186	18.4
3400	Solar, heat, power and fluid engineering devices	9,401	17.4
3500	Construction, petroleum and mining engineering	10,325	18.7
	Not determined	1,007	N/A
Total		**186,195**	**19.8**

Source: Patent Application Location and Monitoring system, PTO; GAO's computations.

Trademark Fee Income Received by PTO in Fiscal Year 1995

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
Trademark processing fees				
361	Application for registration, per class	$245.00	$48,975,658	71.51
362	Filing an amendment to allege use under section 1(c), per class	100.00	514,920	0.75
363	Filing a statement of use under section 1(d)(1), per class	100.00	2,179,315	3.18
364	Filing a request for a 6-month extension of time for filing a statement of use under section 1(d)(1), per class	100.00	3,561,243	5.20
365	Application for renewal, per class	300.00	2,431,445	3.55
366	Additional fee for late renewal, per class	100.00	88,543	0.13
367	Publication of mark under section 12 (c), per class	100.00	6,939	0.01
368	Issuing new certificate of registration	100.00	22,600	0.03
369	Certificate of correction, registrant's error	100.00	45,920	0.07
370	Filing disclaimer to registration	100.00	1,300	0.00
371	Filing amendment to registration	100.00	58,800	0.09
372	Filing section 8 affidavit, per class	100.00	305,785	0.45
373	Filing section 15 affidavit, per class	100.00	64,860	0.09
374	Filing combined sections 8 and 15 affidavit, per class	200.00	5,012,103	7.32
375	Petition to the Commissioner	100.00	92,550	0.14
376	Petition for cancellation, per class	200.00	276,620	0.40
377	Notice of opposition, per class	200.00	903,080	1.32
378	Ex parte appeal, per class	100.00	135,630	0.20
379	Dividing an application, per new application, (file wrapper) created	100.00	67,625	0.10
Total trademark processing fees			**$64,744,936**	**94.54**
Trademark service fees				
461	Printed copy of each registered mark, regular service	$3.00	$4,812	0.01
462	Printed copy of each registered mark, overnight delivery to PTO box or overnight fax	6.00	1,148	0.00
463	Printed copy of each registered mark ordered via expedited mail or fax, expedited service	25.00	647	0.00
464	Certified copy of registered mark, with title and/or status, regular service	10.00	84,110	0.12
465	Certified copy of registered mark, with title and/or status, expedited local service	20.00	217,848	0.32

(continued)

Type of fee and fee code	Fee title	Fee per service	Total fee income	Percent of total
466	Certified or uncertified copy of trademark application as filed, regular service	12.00	113,705	0.17
467	Certified or uncertified copy of trademark application as filed, expedited local service	24.00	152,199	0.22
468	Certified or uncertified copy of trademark-related file wrapper and contents	50.00	21,719	0.03
469	Certified or uncertified copy of trademark document, unless otherwise provided	25.00	5,204	0.01
470	For assignment records, abstracts of title and certification per registration	25.00	21,648	0.03
475	Comparing and certifying copies, per document, per copy	25.00	9,214	0.01
480	Self-service copy charge, per page	0.25	440,631	0.64
481	Recording trademark assignment, agreement or other paper, first mark per document	40.00	661,937	0.97
482	For second and subsequent marks in the same document	25.00	1,846,515	2.70
484	Labor charges for services, per hour or fraction thereof	30.00	22,467	0.03
485	Unspecified other services	At cost	60,335	0.09
488	Each hour of X-SEARCH terminal session time	40.00	72,132	0.11
490	Trademark coupons	3.00	5,464	0.01
	Unspecified trademark fees		125	0.00
Total trademark service fees			**$3,741,860**	**5.47**
Total[a]			**$68,486,796**	**100.01**

[a]Total percent does not equal 100.00 percent because of rounding.

Source: PTO; GAO's computations.

Trademark Fees for Fiscal Year 1997

Type of fee and fee code	Fee title	Fee per service
Trademark processing fees		
361	Application for registration, per class	$245.00
362	Filing an amendment to allege use under section 1(c), per class	100.00
363	Filing a statement of use under section 1(d)(1), per class	100.00
364	Filing a request for a 6 month extension of time for filing a statement of use under section 1(d)(1), per class	100.00
365	Application for renewal, per class	300.00
366	Additional fee for late renewal, per class	100.00
367	Publication of mark under section 12(c), per class	100.00
368	Issuing new certificate of registration	100.00
369	Certificate of correction, registrant's error	100.00
370	Filing disclaimer to registration	100.00
371	Filing amendment to registration	100.00
372	Filing section 8 affidavit, per class	100.00
373	Filing section 15 affidavit, per class	100.00
374	Filing combined sections 8 and 15 affidavit, per class	200.00
375	Petition to the Commissioner	100.00
376	Petition for cancellation, per class	200.00
377	Notice of opposition, per class	200.00
378	Ex parte appeal, per class	100.00
379	Dividing an application, per new application, (file wrapper) created	100.00
Trademark service fees		
461	Printed copy of each registered mark, regular service	$3.00
462	Printed copy of each registered mark, overnight delivery to PTO box or overnight fax	6.00
463	Printed copy of each registered mark ordered via expedited mail or fax, expedited service	25.00
464	Certified copy of registered mark, with title and/or status, regular service	10.00
465	Certified copy of registered mark, with title and/or status, expedited local service	20.00
466	Certified or uncertified copy of trademark application as filed, regular service	15.00
467	Certified or uncertified copy of trademark application as filed, expedited local service	30.00
468	Certified or uncertified copy of trademark-related file wrapper and contents	50.00
469	Certified or uncertified copy of trademark document, unless otherwise provided	25.00

(continued)

Type of fee and fee code	Fee title	Fee per service
470	For assignment records, abstracts of title and certification per registration	25.00
475	Comparing and certifying copies, per document, per copy	25.00
480	Self service copy charge, per page	0.25
481	Recording trademark assignment, agreement or other paper, first mark per document	40.00
482	For second and subsequent marks in the same document	25.00
484	Labor charges for services, per hour or fraction thereof	30.00
485	Unspecified other services	At cost
488	Each hour of X-SEARCH terminal session time	40.00
490	Trademark coupons	3.00

Source: PTO.

Copyright Fees for Fiscal Year 1997

Fee title	Fee per service
Application for registration	$20.00
Application per issue for group serial registration (minimum fee $20.00)	10.00
Application for group registration of daily newspaper, per month	40.00
Application for restoration of copyright under the General Agreements on Tariffs and Trade treaty (minimum fee $20.00)	10.00
Recordation, under section 205, of a document containing no more than one title	20.00
Recordation of additional titles; each group of 10 or fewer	10.00
Recordation, under the Uruguay Round Agreements Act, of a notice of intent to enforce copyright, containing no more than one work	30.00
Additional works contained in the notice of intent to enforce copyright, each	1.00
Additional certificates, each	8.00
Any other certification including Copyright Office records, each, per hour	20.00
Search: reports from official records, per hour	20.00
Search: locating Copyright Office records, per hour	20.00
Filing of notice of intent to make and distribute phone records under section 115(b)	12.00
Receipt for deposit, each	4.00
Special handling for registration	330.00
Special handling for registration given if a single deposit copy covers multiple claims and special handling is requested only for one	50.00
Special handling for recordation of a document	330.00
Full-term retention of copyright deposits under section 704 (e)	270.00
Expedited additional certificate, per hour	50.00
Expedited in-process search, per hour	50.00
Expedited copy of assignment, per hour	50.00
Expedited certification, per hour	50.00
Expedited copy of deposit stored off-site, first hour	70.00
Expedited copy of deposit stored off-site, each additional hour	50.00
Expedited copy of correspondence file stored in Madison Building or at an off-site storage facility, first hour	70.00
Expedited copy of correspondence file stored in Madison Building or at an off-site storage facility, each additional hour	50.00
Expedited reference and bibliographic search, first hour	100.00
Expedited reference and bibliographic search, each additional hour	50.00

Source: Copyright Office.

Copyright Fee Revenues Received by the Copyright Office in Fiscal Year 1995

Title	Fee per service	Total fee income	Percent of total
Supplementary information for registration	$20.00	$68,386	.46
Serial registration	20.00	1,539,664	10.45
Literary works registration	20.00	3,936,280	26.71
Group daily newspaper registration	40.00	77,080	.52
Group serial registration	10.00	267,640	1.82
Mask works registration	20.00	18,580	.13
Motion picture registration	20.00	355,780	2.41
Performing arts registration	20.00	2,833,246	19.22
Sound recording registration	20.00	721,173	4.89
Renewal registration	20.00	646,882	4.39
Visual arts registration	20.00	2,107,476	14.30
Special handling for registration[a]	330.00	838,200	5.69
Special handling for recordation of a document	330.00	193,050	1.31
Document recordation[b]	20.00	544,569	3.70
Surcharges for expedited certifications and reference and bibliographic searches, first hour[c]	50.00	114,092	.77
Certifications[d]	8.00	123,107	.84
Searches, per hour	20.00	194,849	1.32
Other[e]	Variable	157,676	1.07
Total		**$14,737,730**	**100.00**

[a]An additional fee of $50 is charged for each claim given special handling if a single deposit copy covers multiple claims and special handling is requested only for one.

[b]A $10 fee is charged for recording each group of 10 or fewer additional titles.

[c]A fee of $70 for the first hour and $50 for each additional hour is charged for obtaining copies of correspondence stored at an off-site storage facility or at the Madison Building and copies of deposits stored off-site. A surcharge of $100 for the first hour and $50 for each additional hour is charged for expedited reference and bibliographic searches.

[d]A $20 per hour fee is charged for additional certifications.

[e]This includes various fees collected for miscellaneous services, such as making copies and inspecting records.

Source: Copyright Office.

Copyright Office's Analysis Showing Fees Required for Self Sufficiency

In September 1996, the Senate Committee on the Judiciary held a hearing on S. 1961, the Omnibus Patent Act of 1996. Among other things, S. 1961 would have moved the Copyright Office with PTO into a new Intellectual Property Organization and would have made the Copyright Office self-sustaining through fees. In the hearings, the Register of Copyrights opposed making the Copyright Office self-sufficient, stating that fees would increase fivefold and applications would decrease. This position was based on one scenario taken from an analysis the Copyright Office had made that considered fees under 12 scenarios. The entire analysis is reprinted in the following sections, using the Copyright Office's own terminology.

Table X.1: Financial Impacts of Separation Expenses in Fiscal Year 1997 for Copyright Basic

		Current Organization	Independent Agency in LC	Outside LC
Personals	Salaries and Benefits	$22,750,000	$21,900,000[a]	$21,900,000[a]
	Increased Staffing for Automation			2,000,000[b]
	Mandatory Pay Increases	1,000,000	1,000,000	1,000,000
Non Personals[c]	Non Automation	1,600,000	1,500,000[d]	1,700,000[e]
	Automation	240,000	240,000	2,240,000[f]
Overhead[g]		***	8,700,000[h]	6,000,000
Facilities	Office, Light Industrial & Warehouse	***	230,000[i]	5,000,000[j]
	Security	***		80,000[k]
Relocation Costs[l]	Moving			80,000
	Furnishings[m]			2,500,000
	Telephones[n]			1,300,000
	Security[o]			840,000[p]
	Increased Printing			250,000[q]
Totals		$25,590,000	$33,570,000	$44,890,000

(Table notes on next page)

*** Provided by the Library

[a]Assumes that Copyright Acquisitions Division ($701,000) and Compliance Records Unit ($144,300) are transferred to the Library.

[b]Replaces automation staff support lost as a result of separation from the Library.

[c]Less the $2,340,000 appropriated for GATT for fiscal 1996 and 1997.

[d]Non personals of $67,624 (8% x 845,300) deducted for Copyright Acquisitions Division and Compliance Records Unit.

[e]$170,000 increase for two contracts: $9,400 ($185 per week x 52) to send deposits to storage, and $160,000 ($40,000 x 4) for minimum security staffing.

[f]$2 million increase for mainframe and server processing.

[g]Personnel, Financial and Health Services, Procurement and Contracting Support.

[h]The Library's overhead rate of 21.4% applied to Copyright's appropriation of $27,828,000 = $5,955,192 + $2.7 million for the Library's estimate of Copyright automation expenses.

[i]The Library calculates Copyright's space usage at $7.6 million. $230,000 is for Landover warehouse space, and $7.4 million (147,725 sq. ft. @ $50 per sq. ft.) is Madison space. The space usage in Madison is a "beneficial occupancy" and should not be assessed.

[j]Facility costs calculated at the General Service Administration's rate of $32 per sq. ft.

[k]Annual maintenance cost.

[l]$5 million.

[m]$5,000 x 500 for workstations + $100 x 500 for file cabinets.

[n]Equipment $250,000, switch $500,000, and wiring 500,000.

[o]Startup costs for knogo gates ($55,000), cameras, and card readers, and intrusive detection system.

[p]Electronic ($840,000) and non electronic ($80,000).

[q]Reprinting costs for registration forms, circulars, and stationery to include address change.

Source: Copyright Office.

Table X.2: Fee Per Registration for Full Cost Recovery Current Organization

	Decrease in Registration		Decrease in Registration		Decrease in Registration		Decrease in Registration	
	Year 1 30%	Year 2 15%	Year 1 20%	Year 2 10%	Year 1 10%	Year 2 5%	Year 1 5%	Year 2 2.5%
Expenses	$25,590,000	$25,590,000	$25,590,000	$25,590,000	$25,590,000	$25,590,000	$25,590,000	$25,590,000
Less Other Service Fees	–$ 2,000,000	–$ 2,000,000	–$ 2,000,000	–$ 2,000,000	–$ 2,000,000	–$ 2,000,000	–$ 2,000,000	–$ 2,000,000
Plus Mandatories		$ 1,000,000		$ 1,000,000		$ 1,000,000		$ 1,000,000
Adj. Expenses	$23,590,000	$24,590,000	$23,590,000	$24,590,000	$23,590,000	$24,590,000	$23,590,000	$24,590,000
Registrations	420,000	357,000	480,000	432,000	540,000	513,000	570,000	555,750
Fee Per Registration	$56	$69	$49	$57	$44	$48	$41	$44

Assumptions:
Congress mandates full cost recovery.
Enactment of legislation authorizing fee increases.
Fiscal 1997.
Year 1 expenses include $1 million for mandatory pay increases.
Current registrations (600,000) decrease when fees are increased.
Other fees are level.

Source: Copyright Office.

Table X.3: Fees Per Registration for Full Cost Recovery Independent Agency in the Library Without Offsetting Credits

	Decrease in Registrations		Decrease in Registrations		Decrease in Registrations		Decrease in Registrations	
	Year 1 30% Loss	Year 2 15% Loss	Year 1 20% Loss	Year 2 10% Loss	Year 1 10% Loss	Year 2 5% Loss	Year 1 5% Loss	Year 2 2.5% Loss
Expenses	$33,570,000	$33,570,000	$33,570,000	$33,570,000	$33,570,000	$33,570,000	$33,570,000	$33,570,000
Less Other Service Fees	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Mandatory Pay Increase		$1,000,000		$1,000,000		$1,000,000		$1,000,000
Adj. Expenses	$31,570,000	$32,570,000	$31,570,000	$32,570,000	$31,570,000	$32,570,000	$31,570,000	$32,570,000
Registrations	420,000	357,000	480,000	432,000	540,000	513,000	570,000	555,750
Fees Per Registration	$75	$91	$66	$75	$62	$63	$55	$59

Assumptions:
Congress mandates full cost recovery.
Enactment of legislation authorizing fee increases.
Fiscal 1997 expenses.
Year 1 expenses include $1 million for mandatory pay increases.
LC charges for overhead and facilities and there is no credit for value deposits.
Current registrations (600,000) decrease when fees are increased.
Other fees are level.

Source: Copyright Office.

Table X.4: Fees Per Registration for Full Cost Recovery Copyright Office Outside the Library

	Decrease in Registrations		Decrease in Registrations		Decrease in Registrations		Decrease in Registrations	
	Year 1 30% Loss	Year 2 15% Loss	Year 1 20% Loss	Year 2 10% Loss	Year 1 10% Loss	Year 2 5% Loss	Year 1 5% Loss	Year 2 2.5% Loss
Expenses	$44,890,000	$39,890,000	$44,890,000	$39,890,000	$44,890,000	$39,890,000	$44,890,000	$39,890,000
Less Other Service Fees	–$2,000,000	–$2,000,000	–$2,000,000	–$2,000,000	–$2,000,000	–$2,000,000	–$ 2,000,000	–$ 2,000,000
Plus Mandatories		$1,000,000		$1,000,000		$1,000,000		$ 1,000,000
Adj. Expenses	$42,890,000	$38,890,000	$42,890,000	$38,890,000	$42,890,000	$38,890,000	$42,890,000	$38,890,000
Registrations	420,000	357,000	480,000	432,000	540,000	513,000	570,000	555,750
Fees Per Registration	$102	$109	$89	$90	$79	$76	$75	$70

Assumptions:
Congress mandates full cost recovery.
Fiscal 1997.
Year 1 expenses include $1 million for mandatory pay increases.
Year 2 expenses are less $5 million relocation costs.
Enactment of legislation authorizing fee increases.
Current registrations (600,000) decrease when fees are increased.
Other fees are level.

Source: Copyright Office.

Regression Analysis of Copyright Applications

This appendix discusses the regression model we developed to examine the effect that fee changes have had on copyright applications over the past 11 years.[1] We developed a statistical regression model for this analysis that examined whether several factors are associated with changes in applications. We found that although applications were negatively correlated with fees—that is, fee increases were correlated with reduced applications—the primary factor associated with the level of applications was the general level of economic activity as measured by the Gross Domestic Product (GDP). The discussion in this appendix describes the (1) purpose and limitations of the analysis, (2) data sources used, (3) structure of the model, and (4) model's results.

Purpose and Limitations of This Analysis

The primary purpose of this analysis was to measure how copyright applications change in response to fee changes. In order to do this, we constructed a regression model that analyzed several factors that we hypothesized, on the basis of economic reasoning, would be related to the level of copyright applications. For example, a considerable amount of economic literature explores the relationship between research and development expenditures and patenting experience. While patents would likely be more related to research expenditures, we hypothesized that one of the driving factors for copyright applications would be the general level of economic activity. Thus, the basic model related applications to the level of economic activity, as measured by the GDP, the application fee, and dummy variables to control for seasonal variation in applications throughout the year.

An important caveat to this analysis is that there are likely to be factors that influence copyright applications that are unknown or unmeasurable. Thus, this model may not be highly predictive. In particular, if we wanted to use the model to predict the effect of fee increases on applications, the greater the fee increase we want to analyze, the less valid the model would be in predicting the drop in applications that would result. This is because the results of econometric models are best used for analyzing the effects of small changes in the independent factors. In this case, however, because our model results are stable and statistically significant, the

[1]This time period was required by the fact that "receipt of claims," or copyright applications, have only been recorded since 1986. As such, we used a quarterly model over this 11-year time period. An alternative measure of quantity could have been registrations of copyrights, but this would pose some problems. First, applications that are rejected because they are incomplete probably represent those that are of minimal economic benefit to the applicant. These same applicants are also likely to be the most deterred by an increase in the fee. Thus, registrations are not likely to be the best measure to use for studying the effects of fee changes.

model is a reasonable tool for analyzing the effects of larger changes in the independent factors, such as fee levels, on the level of applications.

Sources for Data

All data on copyright applications as well as information on application fees were obtained from the Copyright Office. The applications data were obtained for total applications and also for certain specific categories of applications, as discussed later. Additionally, we received information on applications that were cancelled because they were not fully paid for after the 1991 fee increase. Data on specific categories of applications and on cancellation were available on a fiscal year basis, which required that these data be apportioned for a quarterly model.

We obtained data on GDP and the implicit price deflator for GDP from Data Resources, Inc.

Structure of the Model

The basic hypothesis underlying this analysis is that copyright applications vary over time and that this variation is related to changes in the level of macroeconomic activity, the fee charged for copyright applications, and seasonal variation in applications over the course of the year. Regarding GDP, we hypothesize that there may be a lag in the relationship between GDP and applications. We also hypothesize that because fee increases are usually announced ahead of time, applications may surge in the period prior to a higher fee. The basic quarterly model is thus:

$$Q_t^c = f(GDP_{lag}, fee_t, \text{seasonal dummies}, surge),$$

where:

Q_t^c is the number of applications submitted in period t, GDP_{lag} is the level of real GDP in some lagged time period, fee is the real level of the fee in time period t, seasonal dummies are two dummy variables for winter and summer, and surge is a dummy variable that takes a value of 1 in the quarter before a nominal fee increase and a value of zero in all other quarters.

Measurement of Dependent Variable

The measurement of the dependent variable—the number of copyright applications per quarter—was not straightforward. In defining applications, we would prefer to use total applications, not accounting for different categories of copyrights. However, for three categories of

applications, there were "rule changes" in 1991 that made their inclusion in this analysis problematic.

First, filings of serials were changed in 1991 so that applicants were allowed to bundle several issues over a 3-month period and file them together. In doing so, they were grandfathered in at the old fee: They continued to pay only $10 per issue for the bundled set. This caused filings for Class SE, the original serials category, to drop after 1991 and a new category called Group SE to be established. Unfortunately, however, within one Group SE filing there are a bundle of issues and thus the counts over time are reduced not because there were necessarily any fewer filings, but because some of them are being bundled together. At the same time, another category, Class RE, which are renewals, also had a drop-off in applications because renewals became automatic after 1991.[2] We were told by a Copyright Office official that in the office's own analyses of applications over time, Class RE, Class SE, and Group SE are usually eliminated.

As suggested by the Copyright Office, we used one measure of applications in our model that excluded these three categories. However, in an effort to retain the data on serials, which constitute a large category of applications, we made an estimate of the number of individual issues contained within the average Group SE filing.[3] Doing this allowed us to estimate an alternative measure of applications that only eliminated Class RE from the total number of applications filed each quarter.

For both measures of applications, we also reduced the original "receipt of claims" data by the number of cancellations of applications that occurred due to lack of full payment of the fee. Data on cancellations, available for fiscal years but not quarterly, were obtained from the Copyright Office.

To summarize, there are two measures of applications that we used. The first took the total number of applications in a quarter and subtracted the

[2]In particular, after the fee increase in 1991, many applications were received that included the pre-1991 application fee. The copyright office followed up with letters asking for an additional $10 to process the application. Many of those additional fees were never received. This is important because it may indicate that the applicant was put off by the additional fee and chose to let the application be cancelled. In order to take this into account, the total application counts were reduced by the number of cancelled applications.

[3]To estimate the number of issues contained within a Group SE filing, we obtained information from the Copyright Office on the revenues received for Group SE filings. Since each issue contained within a Group SE filing still retained the $10 fee, we divided the revenue figure by 10 to get the number of Group SE filings in each year. This allowed us to retain both Class and Group SE filings in the analysis, but it should be noted that since Group SE filings still retained the $10 fee, including these applications in the analysis poses some conceptual problems.

number of Class SE, Group SE, Class RE, and cancelled (for nonpayment) applications. The second measure only deleted Class RE and cancelled applications but retained Class SE and Group SE by estimating the number of issues contained within an average Group SE application.

Measurement of Independent Variables

There are five independent variables included in the model.

Real GDP

As noted earlier, the theoretical basis for including GDP is that one would expect applications to rise and fall with the level of economic activity since this may be a factor in determining how many copyrightable works are developed. For example, during an economic boom, new magazines might be established, more financing might be available for people looking to write a novel, and so forth. Conversely, during a recession, newsletters and magazines might discontinue publishing, fewer contracts might be let for songwriters, and financing for creative projects might be more difficult to obtain. Additionally, since some time might elapse from when projects are begun until copyrights are filed, there could be some lag between the economic activity that gives rise to copyrights. We found that a lag of 2 quarters was the best relationship. Therefore, the value of GDP entered into the model is real GDP (in 1996 dollars) for the period 2 quarters prior to the given quarter of each observation.

Application Fee

The application fee is the variable of interest in this model. Although during the 11 years of this analysis there was only one nominal fee increase, inflation was effectively reducing the real fee before and then after the nominal fee increase. We used the implicit price deflator for GDP to adjust the nominal fee into a real fee.

Seasonal Dummy Variables

Two variables were calculated with a value of 1 for a particular quarter and 0 for all other quarters. The first of these was for the second quarter of the fiscal year, and the second was for the fourth quarter of the fiscal year. Thus, the first variable would measure whether applications were systematically higher or lower during winter and the second would measure any systematic difference during summer.

Surge Variable

A dummy variable was established that had a value of 1 for the first quarter of the 1991 fiscal year—right before the nominal fee increase—and a value of 0 for all other quarters. This was needed because the fee increase was preannounced and, as such, could be expected to cause people to rush to file applications in anticipation of the higher fee. This dummy variable is intended to measure any effect on applications in the quarter before the announced fee increase.

Model Results and Interpretation

Table XI.1 presents the results of two specifications of the model:[4] for specification one the measure of applications was used that eliminates Class and Group SE, and the second retains these categories. All continuous variables—the number of applications, the fee, and the GDP—are in natural logarithms.

Table XI.1: Regression Results for Copyright Applications

	Coefficient estimates	
Explanatory factor	**Specification one**	**Specification two**
Fee, 1996 dollars	–.09 (–3.7)	–.11 (–4.8)
2 quarter lag of GDP, 1996 dollars	.92 (10.0)	.73 (8.7)
Dummy for winter quarter	.05 (4.4)	.05 (4.9)
Dummy for summer quarter	–.03 (–2.7)	–.03 (–2.8)
Dummy for quarter before fee increase	.13 (3.8)	.12 (3.9)
Summary statistics		
n	44	44
Adjusted R-square	.80	.77

Note: t-statistics are in parentheses.

Source: GAO analysis.

We found all of the independent variables included in this model to be statistically significant and to have the expected effect. Moreover, results were reasonably stable across the two specifications with different measures of the dependent variable. In particular, our results indicate that if fees increase by 1 percent, applications would be expected to fall (the coefficient is negative) by about .1 percent. Similarly, if GDP rises by 1 percent, applications would be expected to rise by somewhat less than 1 percent. The dummy for the quarter before the price rise suggests that there was about a 12 to 13 percent rise in applications for that quarter

[4]We tested for autocorrelation in this model and found only minimal correlation of the error terms. Results were affected only slightly by a correction for autocorrelation.

because of the expected increase in the fee the following quarter. The seasonal dummies show that applications are about 5-percent higher during the winter and about 3-percent lower during the summer. Overall, our findings indicate that GDP, or the general level of macroeconomic activity, appears to be the driving factor in the level of copyright applications over time. Changes in the real fee have a small but statistically significant effect.

We also want to reemphasize that this model may not be highly predictive. In particular, if we wanted to use the model to predict the effect of fee increases on applications, the greater the fee increase we want to analyze, the less valid the model would be in predicting the drop in applications that will result. This is because the results of econometric models are best used for analyzing the effects of small changes in the independent factors.

Comments From the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230
APR 18 [illegible]

Mr. Victor S. Rezendes
Director, Energy, Resources, and Science Issues
Resources, Community, and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Rezendes:

Enclosed is a copy of the Department of Commerce reply to the General Accounting Office draft report entitled, "Intellectual Property: Fees Are Not Always Commensurate with the Costs of Services" (GAO/RCED-97-113).

These comments are prepared in accordance with the Office of Management and Budget Circular A-50.

Sincerely,

William M. Daley

Enclosure

ENCLOSURE

U.S. DEPARTMENT OF COMMERCE

RESPONSE TO GAO REPORT ENTITLED

"INTELLECTUAL PROPERTY: Fees Are Not Always

Commensurate with the Costs of Services"

GAO/RCED -97-113

Subject: Draft Report to Senator Orrin G. Hatch on Intellectual Property Fees (GAO/RCED-97-113)

The following information is provided to correct, clarify, or expand upon findings related to the four issues related to patent and trademark fees which were to be addressed by this report.

Executive Summary

Now on p. 3.
See comment 1.

On page 3, last paragraph, fiscal year total patent fee income is listed as $575.3 million. This total does not include income received from miscellaneous service fees. The amount should be $577.7 million.

Now on p. 3.
See comment 2.

On page 4, item (2) in the first paragraph should read as follows:

> (2) different categories of applicants pay different fees for the same service.

Now on p. 3.
See comment 3.

On page 4, please add the following sentence after the third sentence:

> The PTO's fee structure is intentionally designed so that filing fees are set artificially low in order to encourage filings, while back-end fees such as issue and maintenance fees are set higher than cost. This structure is similar to the fee structures in place at other major patent offices, such as the European Patent Office (EPO) and the Japanese Patent Office (JPO). However, PTO's patent fees are lower than the comparable fees at the EPO and JPO, and average overall examination time is also lower.

Now on p. 3.
See comment 4.

On page 4, the third sentence of the second paragraph should read as follows:

> In addition, fees and costs tend to be more closely aligned in the trademark process because most income is received prior to examination of the application.

Now on pp. 4 and 34.
See comment 5.

Regarding page 4, and the last sentence of the second paragraph. Patent regulations require acceptance of incomplete applications, while those for trademarks do not. As a result, trademarks does not accept and process incomplete applications.

Now on p. 4.
See comment 6.

On page 5, in the first sentence in the first paragraph, the reference to 134 individual types of fees should be changed to 139 individual types of fees. The 134 count excludes several miscellaneous service fees that are generically attributable to patents.

Now on p. 5.
See comment 7.

On page 6, the second sentence of the first paragraph indicates that average fiscal year 1995 examination time to issue or abandonment was 19.8 months, along with several other pendency numbers. This information should be footnoted to indicate that it is

based on GAO's analysis, as reported in GAO's report on Patent Examination Statistics (GAO/RCED-96-190), and that it differs somewhat from PTO's officially reported pendency time of 19.2 months for the same fiscal year. This comment also applies to 1) issue data contained in the last sentence of first paragraph on page 15; 2) patent pendency data contained in the second sentence of the first paragraph on page 17; 3) data contained in the second paragraph on page 27; and 4) numbers contained in the last paragraph on page 29.

Now on pp. 16, 18, 26, and 28.

On page 6, the second paragraph addresses the impact of applicant delays in the examination process. It is correct that examination time can increase when PTO has to obtain additional information from applicants. However, during a significant part of the time attributable to applicant delay, the application may simply be in storage in the Office, which does not greatly increase the costs to the Office. As a result, it is not accurate to assume that there is a direct relationship between the length of delays caused by an applicant, and the cost of that application.

Now on pp. 5 and 29. See comment 8.

Additionally, in the same paragraph, it indicates that applicant delays accounted for about 19 percent of overall average examination time. Based on information contained in the GAO's report on Patent Examination Statistics (GAO/RCED-96-190), total delays attributable to applicants were 8 months out of an average examination time of 19.8 months, which represents 40 percent of overall average examination time, instead of 19 percent.

See comment 9.

Also, all patent applications filed after June 7, 1995, are subject to a maximum patent term of 20 years from the date of filing. This changes the impact of delays on applicants - prior to 20-year term, delays caused by the applicant did not impact on the length of the patent term after issuance. Now, delays caused by the applicant will reduce the length of the patent term after issuance, which may reduce the length of time of delays attributed to applicants.

See comment 10.

On page 6, the last sentence, which continues onto page 7, should be changed to read as follows:

> While smaller and fewer in number, most trademark fees, with the notable exception of the application fee, are not set by statute, and can be adjusted in the aggregate annually by changes in the CPI. These fees are sufficient to make the trademark process within PTO self-sustaining.

Now on p. 5. See comment 11.

On page 9, the second paragraph addresses matters for consideration by the Congress. The PTO would like to reiterate that the cost accounting information that the PTO expects to have by December 1997 would greatly enhance the substantive information available with which to analyze potential changes to the current structure.

Now on p. 8. See comment 12.

2

Chapter 1 - Introduction

Now on p. 18.
See comment 13.

On page 16, the wording in the last paragraph provides the impression that the series of contacts between applicant and examiner after the "first action" can be numerous. In fiscal year 1995, the average number of examiner actions per disposal, including the first action, was 2.4, and over 10 percent of all applications were allowed on the first action. Please replace the second and third sentences with the following:

> After reviewing the contents of the application, and conducting a search of existing technology similar to that contained in the application, the examiner makes a preliminary decision, or "first action". The first action is then often followed by a number of contacts between the examiner and applicant to resolve questions and/or obtain additional information. On average, the examiner will decide whether to allow the application after fewer than three actions.

Now on p. 18.
See comment 14.

On page 17, the last sentence of the second paragraph should be changed as follows:

> In fiscal year 1995, PTO issued 65,662 certificates of registration.

Now on p. 19.
See comment 15.

On page 18, the third sentence of the first paragraph should be changed as follows:

> If there is no such similarity, and if there are not other statutory bars to registration, PTO publishes the trademark and gives members of the public the right to oppose registration if they feel it is confusingly similar to another trademark, even if this other trademark is not already registered.

Chapter 2 - While the Overall Patent Process Is Self-Sustaining, Individual Fees Are Not Commensurate With Costs of the Services Provided

Now on p. 22.
See comment 16.

On page 22, the fourth sentence in the first paragraph indicates how fees intentionally were not set to the cost of each individual product or service. This structure was designed by the Congress in response to the concerns of various patent constituencies over the impact of increasing patent fees. We would like to see the Congress' role in developing the existing fee structure emphasized.

See comment 17.

This paragraph would also be an excellent place for further elaboration on the overall patent fee structure, and the policy goals that led to the current structure. These considerations include the desire to keep filing costs low in order to not discourage filings, and to charge higher fees at issuance and after issuance. These higher back-end fees are charged at a time when there is no uncertainty as to whether a patent will be granted, and the decision on whether to pay the fees becomes an economic one.

Now on p. 22.
See comment 18.

On page 23, the last sentence of the first paragraph discusses the creation of the small entity subsidy. The small entity subsidy was created by the Congress in response to the

concerns of individual inventors and smaller organizations and businesses over the impact of increasing patent fees. We would like to see the Congress' role in creating the small entity subsidy emphasized.

See comment 19.

Additionally, the current wording that "...large entities would pay statutory fees double the rate of small entities..." gives the impression that large entity fees were increased from a small entity fee base. For those patent fees subject to the small entity subsidy, this emphasis is not consistent with the language in Public Law 97-247, and the small entity subsidy should be presented from the standpoint of small entity fees constituting a reduction from the normal (large entity) fee levels.

Now on p. 23.
See comment 20.

On page 23, please replace the second paragraph with the following paragraph which clarifies that the "surcharge" fees deposited into the special fund are not excess fees.

> Public Law 101-508, enacted November 5, 1990, put PTO on the road to self sufficiency by increasing statutory patent fees by 69 percent as a replacement for appropriations from the general fund. This began in fiscal year 1991. Unlike regular fees, which are treated as offsetting collections for budget purposes, and are fully available to PTO, the additional fees generated from the 69 percent increase were to be treated as offsetting receipts, and would be available to PTO only to the extent appropriated by the Congress. Subsequently, the classification of the fee increase as offsetting receipts was extended through fiscal year 1998 and modified so that annual amounts specified by statute are collected and subject to appropriation by Congress.

Now on p. 23.
See comment 21.

On page 24, the fiscal year 1995 patent fee revenues number should be changed from $575.3 million to $577.7 million.

Now on p.25.
See comment 22.

On page 24, please note that the fee income percent in Table 2.1 for filing fees is unusually high due to the dump of patent applications in fiscal year 1995 prior to implementation of 20-year term. The same percentages in fiscal years 1994 and 1996 were 27.5 percent and 23.7 percent, respectively.

Now on p. 24.
See comment 23.

On page 24, the following numbers in the last two sentences of the second paragraph should be corrected as follows:

> 89.8 percent for large entity filing fees should be 95 percent
> 85.7 percent for small entity filing fees should be 92 percent
> $120 million paid by large entities should be $134 million if referring to all application fees, or $126 million if referring only to utility application fees

Now on p. 25.
See comment 24.

On page 26, item (3) in the last paragraph should be changed to read as follows:

> (3) applicants with less-complicated applications pay the same as those with more complicated applications

See comment 25.

Item (4) from the same paragraph as the above comment is not supported by the fees paid by most applications. This is because applicants who create delays either due to incomplete applications, or delayed responses, are required to pay additional fees for incomplete applications and extension of time fees. These additional fees are not paid by applicants who submit complete applications and are timely in their responses.

Now on p. 26.
See comment 26.

On page 27, in the third sentence of the last paragraph, please note that the large entity percent for maintenance fees should be 88.4 instead of 87.9.

Now on p. 26.
See comment 27.

On page 28, the first bullet under the first paragraph should read as follows:

> - PTO officials told us that the size of the entity has no bearing on PTO's costs.

The rest of the bullet has been removed, because this would imply a change in PTO's policy on the small entity subsidy, and no change has occurred. The small entity subsidy was designed to encourage filings by those with marginal financial resources; however, some patent customers have expressed misgivings over the current definition of a small entity. Under the current definition, small entity applicants include some individuals and businesses that are very successful financially, and the reduced rate is not an incentive to seek patent protection.

Now on p. 27.
See comment 28.

On page 28, the second sentence of the second bullet of the first paragraph should read as follows:

> The categorization of a small business was defined by the Congress, and was based on the criteria used by the Small Business Administration (SBA) in determining what qualifies as a small business for its programs.

Now on p. 28.
See comment 29.

On page 30, third sentence in the last paragraph indicates that the extension of time fee is progressively higher for each month up to four months. This is correct between the first and second month, but not between the second to third month, or between the third and fourth month, as fiscal year 1995 fee amounts indicate. This is because the fee for the second month ($370) represents the payment required if the applicant seeks an extension of two months. If the applicant has already paid the fee for the first month extension ($110), then the amount due is $260, which is the difference between the fee for response within the second month, and the fee for the response within the first month ($370 - $110). This also holds for later extension of time requests. As a result, the difference between the second and first month extension is $260, while the difference between the third and second month extension is $500 ($870 - $370), and the difference between the fourth and third month extension is $490 ($1360 - $870). As can be seen, the extension of time fees do not progressively increase through the fourth month.

Now on p. 29.
See comment 30.

On page 31, the first paragraph attempts to relate examination time to applicant delays. As mentioned in the comment on the second paragraph on page 6, during a significant

part of the time attributable to applicant delay, the application may simply be in storage in the Office, which does not greatly increase the costs to the Office. As a result, it is not accurate to assume that there is a direct relationship between the length of delays caused by an applicant, and the cost of that application.

Now on p. 29. See comment 31.

On page 31, the second sentence of the second paragraph should be changed to read as follows:

> Under one of these initiatives, PTO is developing a cost accounting system that will allow it to regularly determine the unit costs of particular services, something that most government accounting systems, including PTO's, currently cannot provide.

Now on p. 30. See comment 32.

On page 32, in the second sentence of the third paragraph, it should be noted that the PTO would become a wholly-owned government corporation. The term "corporation" alone may cause some to erroneously believe that PTO would be privatized.

Now on p. 30. See comment 33.

On page 33, the second sentence of the second paragraph should be changed to read as follows:

> We believe that the PTO is taking the correct approach in developing a cost-accounting system that will identify the costs attributable to specific patent services.

Chapter 3 - Trademark Fees Appear To Be Aligned With The Costs of Services

Now on p. 32. See comment 34.

On page 35, the last sentence of the third paragraph indicates that Public Law 97-247 provided that trademark fees could be used only for trademark operations. This change occurred under Public Law 102-204.

Now on p. 33 See comment 35.

On page 37, the first sentence of the first paragraph should be changed to read as follows:

> As with the patent process, PTO does not yet have a cost accounting system capable of determining the costs of particular services, although PTO is in the process of developing one, and expects to have it operational by December 1997.

Appendix II

See comment 36.

The miscellaneous service fees were not included. These fees are normally included with patent fee income, and were included on the fiscal year 1995 fee report provided to GAO.

Appendix III

See comment 37.

As with Appendix II, the miscellaneous service fees were not included in the listing of fiscal year 1997 fee amounts.

The following are GAO's comments on the Department of Commerce's letter dated April 18, 1997.

1. In our draft report, we did not include certain miscellaneous fees that were not specifically identified as either patent or trademark fees. Upon further review, we agree with the Department that these miscellaneous fees should be included as patent fees and adjusted the statistics in our report accordingly.

2. We revised the executive summary as suggested.

3. We did not revise the report as suggested by the Department. We believe the report sufficiently shows throughout that the current patent fee system was established by law and that it is intentionally designed to recover most costs through issue and maintenance fees. The report also notes in chapter 2 and appendix IV that U.S. patent fees are lower than those in Europe and Japan.

4. We revised the executive summary to show that trademark income is received prior to examination.

5. We revised chapter 3 to show that PTO does not accept incomplete trademark applications.

6. See comment 1.

7. We did not revise the report because, as we have noted in earlier reports on patent pendency, we believe our statistics—which include design patents and calculate pendency for the entire fiscal year rather than the end of the last quarter of the fiscal year—provide a better appraisal of patent pendency than the statistics reported by PTO.

8. We revised the executive summary and chapter 2 to emphasize that the additional fees charged are not commensurate with the additional "pendency" created. Chapter 2 already made the point that it was not possible to make a direct correlation between extension fees and the costs of the delays.

9. We did not revise the report further than as discussed in comment 8 because chapter 2 notes that we are discussing only those delays for which extension fees are charged rather than all delays.

10. We did not revise the executive summary because the point made by Commerce is that filer delays should decrease because of the change in the patent term. Our point was that the fees charged do not discourage filer delays.

11. We revised the executive summary to show that most trademark revenues come from statutory fees.

12. We agree with Commerce and noted in our conclusions in chapter 2 that PTO is taking the correct approach with this study.

13. We revised the language in chapter 1.

14. We revised the language in chapter 1 as suggested.

15. We revised the language in chapter 1 as suggested.

16. We did not revise the introductory paragraph; however, these points are made in the remainder of chapter 2.

17. See comment 16.

18. We did not revise this section of chapter 2 because it already notes that it was the Congress that created different fees for large and small entities.

19. We did not revise this section of chapter 2 because the purpose here is to show only that, after the change in the law, large entities would pay twice the amounts charged small entities.

20. We revised chapter 2 to clarify that the surcharge fees are not excess fees but a replacement for appropriated funds.

21. See comment 1.

22. We added a paragraph to chapter 2 to show that fiscal year 1995 had an unusually large number of filings because of the change in the patent term and that, correspondingly, filing fees were also abnormally high for that year.

23. We revised the amount shown as revenues for large entities in chapter 2. However, we did not adjust the percentages shown for large and small

entities because, after discussions with PTO officials, we determined that the percentages we had included were correct.

24. We revised the language in chapter 2 as suggested.

25. We revised the language in chapter 2 to reflect Commerce's comment.

26. We did not revise the percentage of maintenance fees paid by large entities because we determined that the percentage we included in our draft report was correct.

27. We revised the language in chapter 2 as suggested by Commerce.

28. We revised the language in chapter 2 to reflect Commerce's comment.

29. We revised the language in chapter 2 to reflect Commerce's comment.

30. See comment 8.

31. We revised the language in chapter 2 to reflect Commerce's comment. We did not include Commerce's suggested language that most government accounting systems cannot provide unit costs for particular services because we do not have such information available to us on these other systems.

32. We revised the language in chapter 2 as suggested by Commerce.

33. We revised the language in chapter 2 as suggested by Commerce.

34. We did not revise the legal citation. After discussions with PTO officials, we determined that the citation shown in the draft was correct. Public Law 97-247 specifies that trademark fees be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks. Public Law 102-204 modified this provision to allow trademark fees also to be used to pay a proportion of overall PTO administrative costs.

35. We did not revise the language in chapter 3 as suggested because this information is already included in the section.

36. See comment 1.

37. See comment 1.

Comments From the Library of Congress

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

THE LIBRARIAN OF CONGRESS

April 16, 1997

Dear Mr. Rezendes:

I am writing in response to your letter dated March 28, 1997 inviting my comments on the General Accounting Office's draft report entitled Intellectual Property: Fees Are Not Always Commensurate with the Costs of Services (GAO/RCED-97-113). I appreciate having an opportunity to offer these comments.

The Register of Copyrights has several problems with the methodology and conclusions of the draft report. Repeatedly statements are made out of context and corresponding conclusions are reached which lack factual support in the contemporaneous or historical record. The analysis of costs is incomplete and lends support to some questionable assumptions. I hope you will carefully examine the Register's comments, which I enclose and fully endorse. Her comments point to problems of methodology and diverge sharply from the conclusions reached in the draft report.

The statement in the report that the Copyright Office has opposed fee increases is simply not true. In this decade, the Copyright Office has consistently moved to increase cost recovery through fee increases: initiating the 1990 fee legislation, requesting authority to adjust fees for inflation in any given year, and advancing legislation (H.R. 672 and S. 506) to recover an even greater percentage of costs. On its own, the Office has increased discretionary fees. The Copyright Office's position on fee increases has not changed as implied in the draft report.

The draft report also fails to acknowledge fully the role and directives of the Congress in setting fees for copyright services and the historical distinction in treatment between those services for which there is a direct beneficiary, such as registration, and those services which serve Congress and the public. For most direct services, fees are set by statute. While the Congress has indicated a desire for greater cost recovery, it has chosen not to implement full cost recovery. For services such as public access to information, rulemaking, analytical work for the Congress, and participation in the development of copyright policy, the Congress has indicated that these should, at least in part, be funded by appropriations. The draft report fails to acknowledge these distinctions and, instead, often refers to "fees" in a collective sense.

101 Independence Avenue, S.E. Washington, DC 20540-1000 Tel.: (202) 707-5205 FAX: (202) 707-1714

I must take particular exception to the draft report's almost complete lack of analysis regarding the potential impact of large increases in copyright fees on the collections of the Library of Congress. According to page 2, the determination of the potential effects of increasing copyright fees was a principal charge given GAO for the report. Over the past year, the Library has undertaken considerable work to document our reliance on copyright deposits and the results of this work were made available to the authors. However, this issue is dismissed in one page with the assertion that Section 407 of the copyright statute will recover any losses in deposits from decreases in registration. This is a simplistic approach that points toward an unlikely solution to a complex problem. This matter is central to the very existence of the Library of Congress as the mint record of American creativity. The draft report fails both to analyze whether section 407 can be implemented in the manner suggested and to suggest what the vastly increased costs would be were we forced to do this.

Finally, let me reiterate my support for the Register's testimony before the Senate Judiciary Committee last September. It was based on sound analysis and a clear reading of S. 1961, the legislation before the committee. It is difficult to understand why the draft report should criticize a witness for outlining a worst-case scenario for a bill before a committee. It is important to emphasize those impacts which might be most severe when asked to comment on a bill by a Congressional committee. In addition, the draft report's criticisms of the Register's cost estimates for the worst-case scenario are faulty. Indeed, they include suggestions which appear to go against federal cost-accounting standards.

I request that the draft report's inaccuracies be corrected in the final report. I further ask that the full context of each issue be presented and carefully considered in light of the importance of the issues involved to both the Copyright Office and the Library of Congress. I would also request that the authors meet with appropriate Copyright Office and Library staff to discuss these comments.

Sincerely,

James H. Billington
The Librarian of Congress

Mr. Victor S. Rezendes
Director, Energy, Resources and
Science Issues
Resources, Community, and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

LIBRARY OF CONGRESS

COMMENTS ON DRAFT GAO REPORT ENTITLED

"INTELLECTUAL PROPERTY: Fees Are Not Always Commensurate with the Costs of Services"

(GAO/RCED-97-113)

March 28, 1997

submitted to GAO on
April 16, 1997

COMMENTS:

A. GAO'S DRAFT REPORT DOES NOT GIVE A COMPLETE PICTURE OF THE COPYRIGHT OFFICE'S FEE STRUCTURE AND MISREPRESENTS THE COPYRIGHT OFFICE'S POSITION AND ACTIONS REGARDING FEE INCREASES

The requester of this report asked that GAO "determine how fees are set for the services provided by the federal agencies." The GAO draft response oversimplifies the current fee structure set by Congress, overlooks Congressional precedent in setting fees, and does not address the proactive role the Office has played in increasing fees. A fuller understanding of the specific funding of the Office and what led Congress to make initial determinations creating the existing balance between fees and appropriations is necessary in order to address the merits of the Office's responses to 100% cost recovery.

Oversimplification of fee structure

See comment 1.

The section of the GAO report dealing with the Copyright Office oversimplifies the fee structure. Currently, the services provided by the Copyright Office may be funded in three ways: (1) fees paid for services that are either set by Congress[1] or delegated to the Register in the statute, (2) appropriations, and (3) deductions from royalty payments.

See comment 1.

In 1976, Congress specifically provided what the fees should be for certain services related to registration and recordation;[2] these fees are known as statutory fees and have been

[1] Fees fixed by statute account for about 90% of Copyright Office income from fees.

[2] 1) for the filing of an application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made, $20;
2) for the filing an application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made, $20;
3) for the issuance of a receipt for a deposit under section 407, $4;

(continued...)

established in the law since 1870 and periodically increased by Congressional action. The most recent Congressional increase, effective in 1991, was initiated at the request of the Copyright Office and contained an adjustment for inflation every five years.[3] For reasons discussed below, the Office decided not to adjust these fees in 1995. Congress also gave the Register the authority to fix fees for special services requiring a substantial amount of time or expense.[4]

See comment 2.

Heretofore, Congress, not the Copyright Office, has determined that a certain percentage of what the Office does should be funded by the taxpayer. Congress has also

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[2](...continued)
4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document covering not more than one title, $20; for additional titles, $10 for each group of not more than 10 titles;
5) for the filing, under section 115(b), a notice of intention to obtain a compulsory license, $12;
6) for the recordation, under section 302(c) of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, $20, for a document covering not more than one title; for each additional title, $2;
7) for the issuance, under section 706, of an additional certificate of registration, $8;
8) for the issuance of any other certification, $20 for each hour or fraction of an hour consumed with respect thereto;
9) for the making and reporting of a search as provided by section 705, and for any related services, $20 for each hour or fraction of an hour consumed with respect thereto;
17 U.S.C. § 708(a)(1)-(9).

[3] As amended by statute on July 3, 1990, section 708(b) of the statute offers the Register the possibility of adjusting fixed fees for inflation:

> In calendar year 1995 and in each subsequent fifth calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) by the percent change in the annual average, for the preceding calendar year, of the Consumer Price Index published by the Bureau of Labor Statistics, over the annual average of the Consumer Price Index for the fifth calendar year preceding the calendar year in which such increase is authorized.

[4] 10) for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service. The Register of Copyrights is authorized to fix the fees for preparing copies of Copyright Office records, whether or not such copies are certified, on the basis of the cost of providing the service. 17 U.S.C. § 708(a)(10).

determined that the services related to the compulsory licenses should be fully recovered from royalty payments. A determination that all costs should be recovered by fees must be made by Congress,[5] not the Register. This is acknowledged in the GAO draft report at page 9.[6]

Congressional directives on fees and cost recovery

See comment 3.

The GAO draft report does not assimilate the effect of the historic Congressional balance between fees and appropriations in funding the Copyright Office. The draft report suggests that the Copyright Office has been remiss in not pressing for full cost recovery when in fact the Office has been proactive in initiating actions to increase cost recovery through fees.

See comment 4.

The GAO draft report does not acknowledge that Congress has repeatedly passed legislation setting copyright fees on the clearly-stated premise that such fees would not recover all costs. An analysis of earlier fee legislation reflects the Congressional policy of achieving a balance in copyright funding between a user fee and an appropriation to reflect the benefit to the public. For example, the legislative history of the 1976 Act demonstrates that Congress clearly intended to fund with taxpayer money a share of the activities of the

[5] H.R. 672 as passed by the House and S. 506 as introduced by the Senate do not contain such a determination. To the contrary the bills provide for recovering of reasonable costs for the services described.

[6] "(T)he Congress may wish to consider whether the Copyright Office should achieve full cost recovery through fees, as it has done with PTO, and, if so, whether fees for particular services should be commensurate with the costs of those services,"GAO report at 9.

See comment 5.

Copyright Office not directly related to providing user services.[7] This purpose is also reflected in the legislative history of the 1984 "Semiconductor Chip Protection Act" setting fees for mask works.[8]

In doubling fees in 1990, at the request of the Office, Congress addressed what the statutory fees should be. The Senate recognized that the increased fees should reflect the historic proportions between costs borne by the user and those borne by the public.

> Congress set the current fees schedule in the Copyright Act of 1976. The act embodied what Congress decided should be the proper proportion of Copyright Office costs borne by direct beneficiaries and users of copyright services and those to be borne by the taxpayers. S. 1271 and H.R. 1622 are designed to return the Copyright Office to its historic ratio of earned fees to Office expenses.

S. Rep. No. 267, 105th Cong., 2d Sess. 231 (1990). Moreover, the Senate explicitly recognized that the new fee structure would offset about two-thirds of the Office's

[7] "It is our estimate that the proposed fee schedule, if applied to claims entered and services rendered...would return to the Government 79 percent of the sum appropriated to the Office." 120 Cong. Rep. S 15857 (daily ed. Sept. 4, 1974) (Statement of Sen. Eastland).

"(T)he Copyright Office estimates that the fee schedule in the bill would return approximately 80 percent of the moneys appropriated to the Office. S. Rep. No. 89th Cong., 1st Sess. 3 (1965)."

[8] Section 908(b) directs the Copyright Office to establish fees for registration and related services. The level of such fees is to be set by the Copyright Office, taking into consideration the reasonable costs associated with providing the services. The Register must also consider the statutory fee schedules under the Copyright Act, and also, as a countervailing factor, the benefit to the public of having a public record as to mask works. By requiring consideration of cost and the public interest, the Register will have to balance competing demands. It is the view of the committee that such balancing will result in fee levels being set at lower than a user fee level. H.R. Rep. No. 781, 98th Cong., 2d Sess. 24 (1982) Emphasis added.

operations.[9] The Senate report reflects that the Office performs certain valuable services, e.g. public information, rulemaking, participation in the development of national and international copyright policy, and preparation of reports and studies for the Congress that are among the services of a public nature,[10] along with services related to mandatory deposit, that should be paid by the taxpayer.

Lack of acknowledgment of Office's proactive role

See comment 6.

The GAO draft report does not acknowledge that the Copyright Office's position on fees is based on Congressional directives providing for a balance between fees and appropriations and that the Office has taken an active role in ensuring that balance is maintained. The record shows that the Office has initiated fee adjustments.

See comment 7.

There are several statements in the report that suggest the Office dragged its heels in getting fee increases, the most misleading is: "We found that... even when permitted by law, the Copyright Office has not raised fees to cover the effects of inflation." GAO draft report at 42. This statement implies that the Copyright Office continually refused to raise fees to cover inflation. In fact, the Office asked Congress to raise statutory fees on several occasions and on its own raised non-statutory fees as needed to cover inflation. Congress did not

Now on p. 37.

[9] The increased revenue from the enactment of this act will allow the Office to become more self-sustaining. According to Copyright Office estimates, the increased revenues will offset approximately two-thirds of the $19 million it takes to sustain Office operations. Id. at 232.

[10] In accord H.R. Rep. No. 279, 101st Cong., 1st Sess. 2 (1989). The House Report also noted that "(f)ees would account for about two-thirds of operating costs, and taxpayers would pay for one-third." Id. Finally, the House concluded that this balance should be maintained. Id.

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initiate the fee increase that doubled most statutory fees in 1991; the Copyright Office did. The Copyright Office also proposed the provision in the 1976 Act, that would allow an adjustment to maintain fees at the same level of cost recovery approved by Congress in that legislation. Since given the authority to assess fees for special services, the Office not only set those fees initially but adjusted them in 1982, 1984 and 1987, to cover increasing costs.[11] Based on the Copyright Office study of fees, it also increased these special service or discretionary fees in 1994. The GAO draft report refers to discretionary fees twice; once, it notes: "In addition to the statutory fees, the Register of Copyrights sets fees by regulation for special services such as providing optional full-term storage of published materials." GAO draft report at 41. It does not mention in either reference that these fees can and do recover the "cost of providing the service" and that they account for about 10% of the annual fee income from the registration system.

Now on p. 37 .

Only once did the Office choose not to raise statutory fees. As the draft report notes, since 1990, the law has permitted the Copyright Office to increase statutory fees every five years. The first and only opportunity to do so was in 1995. Prior to that window of opportunity, at the end of 1993, the Acting Register commissioned an internal Copyright Office study to examine both statutory fees and discretionary fees and to determine for statutory fees whether the Office should raise the fees. Based on that study the Acting Register determined that the permitted statutory increase would not be cost effective but that

See comment 8.

[11] The Office has on its own increased other discretionary fees for special handling, see, 47 Fed. Reg. 19254 (1982); 49 Fed. Reg. 39741 (1984), and full term retention, see, 52 Fed. Reg. 28 821 (1987).

the discretionary fees. Soon, after her appointment in August, 1994, the new Register reviewed the study and reaffirmed its conclusion. She approved the increase of discretionary fees and also determined that section 708(b) needed to be amended in order to permit the Office to increase all of the fees in any calendar year and to include a inflation adjustment from the last increase. Moreover, she initiated action seeking such a Congressional change.[12] The House passed that bill, H.R. 1861, in 1995; the Senate did not. H.R. 672 already passed by the House in 1997 and introduced by the Senate as S. 506 would give the Office that flexibility. The House has stated that "[t]he fees must be fair and equitable and give due consideration to the objectives of the copyright system."[13]

B. THE DRAFT REPORT IS BASED ON AN ANALYSIS OF COSTS AND COMMENSURATE FEES THAT IS FLAWED

See comment 9.

The draft report views costs in terms of appropriations through much of the report and in particular in its preparation of fee estimates. However, it frequently refers to the "cost of the copyright process" or the "cost of providing service". Perhaps the "cost of the copyright process" is intended to mean only Congressional appropriations. The "cost of providing services" presumes actual costs and the analysis of the cost of maintaining the Copyright

[12] The draft report does not note that increasing fees as authorized by law would not have made fees come close to recovering costs. The Office's projected income for 1995 from the authorized fee increase of roughly 16% would have recovered between 5 and 10% of the appropriations not already supported by Copyright Office fees.

[13] H.R. Rep No. 25, 105th Cong., 1st Sess. 16 (1997).

Office as a part of an Intellectual Property Organization as proposed in S. 1961 requires an analysis of estimated actual costs.

See comment 10.

For analyzing the Patent and Trademark Office costs, perhaps using only appropriations is sufficient. Presumably, it already pays for its own space, security, and other overhead expenses. This model is not valid for the Copyright Office and particularly not for the Copyright Office as proposed in S. 1961. GAO's choice to consider only recovering direct appropriations to the Copyright Office does not account for the many actual costs that are not paid from that sum even now, such as the following Library and inter-entity costs:

- housing provided by the Architect of the Capitol
- storage facilities provided by the Library and by GSA
- overhead (payroll, personnel, health services, security, recruitment, etc.) provided by the Library
- a number of additional costs included in the new federal cost accounting standard effective in FY97 (SFFAS#4), including the government's share of CSRS retirement and FEHB post-retirement medical insurance

See comment 11.

On the other hand, the draft report does not mention the value of the deposits acquired through copyright registration, at a cost to the applicants, that are added to the Library of Congress collections at a value of at least $13,000,000 per year.

See comment 12.

The draft report also does not consider recovering costs to the government as a whole, but only replacing the $10,000,000 in unrecovered appropriations. It does not estimate costs of providing copyright services as proposed in S. 1961, though it finds fault with the

Register's estimates. Nor does it assess the impact of raising fees to recover costs in an IPO, an impact that by its own regression model would presume a 30 to 50% decline in registrations.

The draft report changes parameters during the analysis of the impact of a fee increase that would make the Copyright Office self-sustaining

See comment 13.

The draft report does not analyze the impact of the three- or four-fold increases it seems to consider reasonable if the Copyright Office were to become part of an IPO as proposed in S.1961. In fact, it does not suggest an alternative cost recovery estimate for the Copyright Office within an IPO, a scenario to which several pages are devoted. Instead, in the discussion of a decrease in applications and resulting impact, the draft report unaccountably drops any consideration of increasing fees by more than 100%.

See comment 14.

The analysis shifts from the S. 1961 scenario to a new one without notice or explanation. If the report addresses the cost of the copyright process as proposed in S. 1961, although the requester did not ask for such input, it should determine a valid cost basis for that scenario. It should not drop that proposition and begin an analysis of impact on a new basis. Beginning with the heading "Applications May Not Decrease as Projected" on page 51 of the draft report, it appears that one must assume either that the Copyright Office would remain a part of the Library of Congress or that the Office could move to an IPO as proposed in S. 1961 with no increase in costs whatever.

Now on pp. 45 and 46.

See comment 15.

See comment 15.

See comment 16.

The analysis does not apply its own regression model to the proposed scenarios

Consider the following statement from page 51 of the draft report:

> ...we again looked at the Copyright Office's preliminary analysis supporting the projected five-fold increase in fees. We found this scenario was based on estimates that registrations would decrease 30 percent in the first year after the fee increase and an additional 15 percent in the second year...these estimates of registration decreases are questionable for various reasons...decreases of the magnitude projected have never occurred in the more than 100 years for which the Copyright Office has data.

First, GAO's own regression model would have applications decreasing by 50% the first year, far more than the Copyright Office's hypothetical scenarios, which topped out at 30%. Second, there is no precedent for such a great fee increase, so no such decreases in applications should have occurred in the past 100 years.

The cost analysis does not consider the way projected income must be estimated to attempt cost recovery

None of the draft report's analysis suggests an even passing recognition of the fact that self-support depends on a RATIO OF COSTS INCURRED TO FEES RECEIVED. Projecting the number of applications that might be filed if the fees were placed at $"N" is essential to any analysis of cost recovery because it determines income. The draft report fails to consider this crucial fact: Cost recovery depends upon the public being willing to pay the assigned fees in sufficient numbers to equal costs.

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See comment 17.

Costs may be adjusted in response to diminishing workload, but they follow and react to workload changes. To guarantee sufficient income to cover expenses must be a balancing act. A shortfall, even in the short term, would be devastating.

See comment 18.

The draft report misstates the Library's and Copyright Office's position on full cost recovery for the Copyright Office

The Library supports the goal of moving toward full cost recovery of fee services, with due regard for the potential impact on the national copyright system and the collections of the Library. The draft report's repeated reference to a Library of Congress report as the official policy of the Library is incorrect. The report referenced was prepared by an advisor to the Librarian; its recommendations have not been adopted as the policy of the Library.

See comment 19.

The Copyright Office wishes to become more self-supporting in terms of fee services as a department of the Library of Congress. The Office's goal is to meet federal cost accounting standards and the provisions stated in H.R. 672 with respect to fee services provided by the Office. The implication in the report that full-cost recovery would be met if Congress' annual appropriation of $10 million could be eliminated is simplistic. The appropriation includes funding for Copyright Office services of a public nature that should not be supported by fees, including public information, rulemaking, development of national and international copyright policy, preparation of reports and studies for Congress, administration of section 407 mandatory deposit provisions, and the special funding for the International Copyright Institute. The accounting should recognize the value of the deposits

See comment 20.

received through the registration and deposit processes in calculating costs and setting appropriate fees.

The Copyright Office opposes, however, becoming self-sustaining under a model where total costs to the government for all functions of the Copyright Office must be recovered, particularly if the model does not assign a value to the deposits received through the Copyright Office. The Office opposes full-cost recovery under the terms of S.1961.

C. THE DRAFT REPORT DOES NOT FULLY ASSESS THE IMPACT A DECREASE IN REGISTRATIONS WOULD HAVE ON THE LIBRARY OF CONGRESS COLLECTIONS, THE PUBLIC, OR THE PUBLIC RECORD

Impact on the Library collections

Now on p. 48.
See comment 21.

On page 56, the draft report states: "(B)ecause of other provisions in existing legislation, a decline in registrations should have no significant impact." This sentence and the succeeding paragraphs suggest that those who choose not to register automatically will send two copies of the unregistered publication to the Library of Congress because this is required under Section 407 of the law. Nothing could be further from the truth.

See comment 21.

Quoting from the Librarian of Congress' written statement submitted to the Senate Committee on the Judiciary hearing on S. 1961, September 18, 1996:

> The essential value of the Library of Congress, beyond service to the Congress, lies in the universality of its collections and its role as the keeper of the mint record of American creativity. the presence of the Copyright Office in the Library ensures that both these qualities are sustained. Copyright, more than any other single factor, built the Americana collections of the Library of Congress and copyright now sustains them. No other scheme of acquisition has produced such a

strong repository of a nation's cultural and intellectual history anywhere in the world.

I would point out to the Committee that there is no mint record of American creativity prior to 1870 precisely because there was no reliable system to build this record before copyright became part of the Library of Congress. The continuing record of American creativity output since 1870 would greatly diminish if this legislation is enacted.

I can envisage no scenario where, upon removal of the Copyright Office from the Library, the Library will be assured of receiving the amount and scope of materials it now receives from copyright deposit.

Let us look at the facts. Almost $40 million worth of materials has been transferred from the Copyright Office to the Library's collections in the past three years alone. Each year, an average of 816,000 items are received through the copyright system, more than 500,000 of which are selected for the Library's collections. Copyright deposits are the Library's primary source for books, serials and other print materials published in the United States. Nearly all U.S. newspaper microfilms are received via copyright deposit. Moreover, the 60,000 books not selected for the collections each year allow our Exchange and Gift program to exchange these books for important foreign works without cost to the taxpayer.

See comment 21.

Specifically, in response to the question of recovering deposits lost by diminished registrations through the mandatory deposit provisions, he said:

Section 407 of the copyright statute requires that two copies of every copyrightable work published in the United States be sent to the Copyright Office for the use or disposition of the Library of Congress. The law envisions that all such works will be deposited voluntarily. In practice, this does not occur. It is most unrealistic to expect that the Library can rely on Section 407 for the deposit of works lost through decreases in registrations. This would require the development of a sizable new Library bureaucracy to identify and demand published

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works. We would, even then, have little ability to enforce the deposit requirements.

See comment 22.

The Copyright Acquisitions Division exists for the purpose of requesting, or demanding deposits not sent in voluntarily that are identified as desirable for the Library's collections. In FY96, the acquisitions staffing costs were almost $1,000,000. In that year, through its efforts, the Copyright Office received a total of 5896 works (with 22,691 pieces) valued at $1,401,592.

D. THE DRAFT REPORT MAKES AN UNSUBSTANTIATED ATTACK ON THE REGISTER'S TESTIMONY ON S. 1961 REGARDING FEE ESTIMATES FOR A SELF-SUPPORTING COPYRIGHT OFFICE WITHIN AN INTELLECTUAL PROPERTY CORPORATION

See comment 23.

The Library of Congress strongly objects to the draft report's implication that the Register misled the Senate Judiciary Committee in testimony at a September 1996 hearing. The narrative demonstrates disregard for the provisions of S. 1961, the bill under discussion at the hearing. The draft report finds fault with the Register's choice of presenting to the Committee the possibility that the registration fee would have to be increased "five-fold," the "worst-case scenario" on the fees required to be self-supporting in various configurations.

See comment 24.

The Register of Copyrights has an obligation to present to the Congress the worst-case scenario that could result from their proposed legislation. To do less would be irresponsible.

See comment 25.

The report views the "worst-case" scenario as unrealistical, though it does not question the estimated fees for the other scenarios, which range from $41 to $89, a more than four-fold increase.

Now on p.44.
See comment 26.

The draft report's doubts about the accuracy of the Register's estimate are summarized in four points made on page 50 and 51.

1. "The costs in general were based on the Copyright Office's becoming an independent and self-sustaining agency, while S. 1961 - the bill under discussion at the hearings - proposed including it within the IPO that would also include the patent and trademark offices."

See comment 27.

The situation under S. 1961 would have been *as bad or worse* than the scenario the Register presented. In addition to requiring that the Copyright Office be self-supporting S.1961 imposed on the Copyright Office, an agency whose budget is roughly one-twentieth that of the Patent Office, a one-third share of the entire budget of the office of the Commissioner of Intellectual Property and a proportion of other administrative, appeals board, and advisory board expenses over which it would have no control.

2. "Facilities were estimated to cost $5 million. This was based on the Copyright Office's obtaining new space at a cost of $32 per square foot. It did not consider leaving the Copyright Office in its current space, where the facilities are government-owned and there is no rental cost to the Copyright Office."

See comment 28.

This section appear to criticize the Office for not considering the possibility that the Office might be removed administratively from the Library of Congress, but left to occupy its current space. In the history of the U.S. Government, the Copyright Office is unaware of any instance where an executive agency was housed within a legislative entity *at the expense of the legislative entity*. It would contradict Federal cost accounting standards effective in 1997, as described in Statement of Federal Financial Accounting Standards Number 4, July 31, 1995. To expect the Copyright Office to contemplate such an

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unprecedented move, particularly when there was no such provision in S. 1961, is unwarranted.

See comment 29.

3. The analysis projected a significant decrease in applications,...but did not consider that costs might be lower if applications were fewer.

The authors were told repeatedly that the Copyright Office's operating divisions are severely understaffed and backlogged. A 20% decrease in registrations might enable the Office to process its receipts in a timely manner with the current staff, but would scarcely permit the Office to decrease its staffing beyond its current level. It is noteworthy that the Copyright Office is working as a partner with the Library's National Digital Library in the development and implementation of CORDS (the Copyright Office Electronic Registration, Recordation and Deposit System) that should substantially reduce Copyright Office staffing needs in future years.

See comment 30.

4. The analysis assumed the Copyright Office would have to acquire new computer equipment and services rather than to continue to use those now shared with the Library of Congress or share such equipment and services with the other offices within the new IPO.

In fact, S. 1961 clearly indicates that the Copyright Office would pay for its share of expenses in an IPO. Therefore, the Copyright Office would not have considered the possibility of continuing to receive Library of Congress services free of charge. It also would be naive to assume current computer systems in the PTO could absorb the immense Copyright Office cataloging and inprocess databases without substantial expenditures in hardware and software. With respect to automation within the Library of Congress, exceptional expenditures will be assumed by the Library over the next few years because of

the urgent need to modernize the Office's legacy systems, COPICS, the online catalog of copyright entries (which dates to 1975), and COINS, the inprocess tracking system. In another organization, the specialized expertise to maintain these systems pending modernization would not be available.

The following are GAO's comments on the Library of Congress's letter dated April 16, 1997.

1. The Library notes that the Copyright Office obtains funding in three ways: (1) fees set by law or authorized by law to be set by the Register, (2) appropriations, and (3) deductions from royalty payments. We do not agree that our report "oversimplifies the fee structure," because we made this same point in the report. We included table 4.1 for the specific purpose of comparing fee revenues and appropriations since the last statutory fee increase.

2. The Library emphasizes that it is the Congress which determines how copyright fees should be set and, to date, has chosen to cover copyright costs through a combination of fees and appropriations. As the Library acknowledges in its comments, our report makes this same point. It is also important to recognize that our report does not make any recommendations to the Congress that fees be raised or that the Copyright Office become self-sustaining. Rather, we point out that, in view of the manner in which the Congress has chosen to fund the patent and trademark processes—both of which were funded partially at one time by appropriations—it may also wish to consider making the copyright process self-sustaining through fees. Ultimately, the issue of how the copyright process should be funded is a matter of policy that depends on a number of factors and requires a decision that only the Congress can make.

3. We do not suggest that the Copyright Office has been remiss in "pressing for full cost recovery" as the Library states in its comments and have added information showing the Copyright Office's support for a fee increase. As we note in our response to comment 2, however, we believe this is an issue for the Congress. We discuss the Copyright Office's documented positions on fee increases since the last statutory fee increase because we believe the Congress in its own deliberations should be aware of the positions the Copyright Office has taken on the need for fee increases, the rationales for these positions, and our evaluation of these rationales. Thus, while we revised the report to show the Copyright Office has supported the need for fee increases, we also believe it is important to discuss (1) the opportunity to raise fees to cover inflation in fiscal year 1995 and (2) the Register's testimony on S. 1961 in September 1996. We also cite the Register's position on this issue as discussed with us in March 1997 and provide additional information based on our discussion with Library officials in April 1997.

4. Our report makes repeated references to the legislative history of copyright fees and emphasizes that the structure now in place was established by the Congress and that the Congress chose to fund the Copyright Office with a mixture of fees, royalty payments, and appropriations in the past. The focus of our report is on what has occurred since the last statutory fee increase went into effect in 1991. We revised the language where appropriate in the report to address this point.

5. We agree that the legislative history for the most recent statutory fee increase indicated a congressional intent to continue funding the copyright process through a combination of fees and appropriations. However, as our report illustrates, much has changed since the last statutory fee increase, including PTO's having become totally dependent on fees. Our report notes only that, in light of these recent events, the Congress may wish to reconsider the manner in which the copyright process is to be funded in the future.

6. See comments 4 and 5.

7. See comments 4 and 5. We are not questioning the Copyright Office's actions related to fee increases in 1976, 1982, 1984, 1987, and 1991, when they recognized and supported the need for fee increases. Again, we focus on what has happened since the last statutory fee increase. We have added information showing that the Copyright Office currently supports a fee increase. In discussing the decision on increasing fees for inflation, our report notes that the Register raised fees for special services. We also point out that the Copyright Office has set a fee of $270 for full-term storage of published materials and, in fact, we use this in our discussion of the high costs of storing unpublished materials without charging an additional fee.

8. The Library says that "only once" did the Register choose not to raise statutory fees for inflation. As our report states, this one time was the only time the opportunity has arisen since the last statutory fee increase. According to the Copyright Office's own study of the need for an inflation adjustment, a fee increase to cover inflation would have been cost-effective, yet the Acting Register chose only to raise certain discretionary fees. The Library commented in footnote 12 that the report did not note that the fee increase, if made, would not have "made fees come close to recovering costs." We did not make this statement because, by its very nature, an inflation adjustment could not make the Copyright Office self-sustaining if it were not self-sustaining before. Our point in this

section of chapter 4 is not that an inflation adjustment would have made the Copyright Office self-sustaining but rather that the increase would have kept the ratio of fees to costs closer to that established by the Congress at the point of the last statutory fee increase.

9. Our report does not attempt to determine the exact cost of the copyright process but rather uses the costs that the Copyright Office and the Library use in their own documents, including budget submissions. We recognize that the Library may be providing some services to the Copyright Office at no cost and that the Copyright Office may be incurring costs that are not directly related to the copyright process. For purposes of this report, we consider the costs of the copyright process to be those now being covered by copyright fees and Copyright Office appropriations. We also consider these costs as the Copyright Office is now configured, not as it might have been configured under the provisions of S. 1961. To become self-sustaining as now configured, the Copyright Office would have to raise fees to a level that would at least cover appropriations of the Copyright Office.

We also note in our report that the Copyright Office is planning to initiate a study to determine the costs of the copyright process and the fees that would be necessary to recover these costs. The results from such a study should be beneficial to the Congress if it does decide to consider a statutory fee increase.

10. See comment 9. Again, the purpose of our report was not to discuss the merits of an agency such as that proposed by S. 1961 but rather to show that (1) the scenario presented in the hearing was the worst case and (2) the costs and fee increases needed could change significantly under various assumptions. We recognize that, if an agency such as that envisioned under S. 1961 had been created, decisions would be needed on how to handle certain items now being provided to the Copyright Office at no cost. However, this would also seem to be true—as the Library notes in comment 11—for the $13 million in free materials being provided to the Library by the Copyright Office each year. Thus, if accounting adjustments are necessary—a point not necessary for the discussion here—it seems that they would have to be made for both the Library and the Copyright Office.

11. See comment 10. Our report does not discuss the value of deposits acquired through the copyright process because this factor—while certainly of importance to the Library and the nation as a whole—is not relevant in determining how copyright fees are to be set. Our report points

out that a copyright fee increase should not materially affect the Library's ability to obtain free copies of materials for its collections because (1) by law, the Library still has access to anything that is submitted for copyright registration or is published in the United States and (2) it rarely takes any unpublished materials for its collections.

12. Our report does not discuss the fees necessary for recovering costs to the government as a whole for the reasons discussed in our response to comments 9 and 10. Our report also does not discuss these other costs as they relate to patents and trademarks. For purposes of this report, we use the costs necessary to fund the agencies as now configured, using the agencies' own documentation for these costs. The issue of whether there are other intellectual property costs—for example, in areas such as treaty negotiation, judicial proceedings, Customs protection, etc.—is beyond the scope of this report. Also, our report provides reasons why we disagree with the Register's estimates. We point out that, while these estimates were presented as a likely outcome of the Copyright Office's becoming self-sustaining under S. 1961, the Register did not disclose that they were in fact a worst-case scenario and that the Copyright Office had prepared other estimates that would lead to other outcomes under other assumptions. In addition, as noted in the report, we do not believe some of these costs were necessarily reasonable even under the scenario presented. For a discussion on the Library's point on our regression analysis, see comment 15.

13. Our report does not discuss "three- or four-fold increases" in fees as reasonable if the Copyright Office were to become a part of an IPO, as stated by the Library in its comments. The proposal to make the Copyright Office part of the IPO was withdrawn and, to our knowledge, is not now under consideration. Our report does not discuss "increasing fees by more than 100%" because both the Register and the Congressional Budget Office (CBO) estimated that the Copyright Office could become self-sustaining as now configured by an approximate doubling of fees.

14. We address the cost projections for S. 1961 in our report because (1) these were the projections used by the Register in her prepared statement for the hearing before the Senate Committee on the Judiciary and (2) S. 1961 was the only proposal to make the Copyright Office self-sustaining that had been made—and on which the Copyright Office had taken a published position—since the last statutory fee increase went into effect in fiscal year 1991. In addition, during the discussion period following the Register's testimony, the Chairman questioned the

projections and noted that he had asked GAO to study the fees issue. The only fee projection the Register made was for a fivefold increase—the worst-case scenario developed by the Copyright Office. We believe that it is important for the Committee to know that the Copyright Office had developed 12 separate scenarios that had different outcomes using different assumptions and that the scenario presented at the hearing was not only the worst-case scenario but also included costs we consider questionable. Otherwise, the Committee could be left with the impression that the fivefold increase is a likely scenario for making the Copyright Office self-sustaining. As we discuss in the report, this is not the case, as CBO and the Register herself later said that, as presently configured within the Library, the Copyright Office could probably become self-sustaining by doubling current fees.

15. Based on the Library's comments, we believe that it used our model inappropriately. The report states that our regression analysis indicates a decrease in applications of about 10 percent in the first year if fees were doubled but also that a regression model such as the one we used tends not to be as highly predictive at this high a level of fee increase. Consequently, the regression analysis would be even less predictive at even higher levels of fee increases. As noted by the Library and our report, there is no precedent for fee increases beyond 100 percent.

In discussing the effects of a fee increase on applications, we also believe it is important to consider what applications would be affected as well as the impact on the Copyright Office and the Library. As noted in our report, for example, Copyright Office officials said that some types of applications would be affected more than others by a fee increase. After the most recent statutory fee increase, applications for unpublished works decreased at a rate higher than published works. This would seem to limit any potentially harmful effects on the Copyright Office and the Library because (1) a decrease in unpublished submissions would reduce the Copyright Office's workload and storage costs and (2) the Library rarely takes unpublished submissions for its collections. Similarly, according to Copyright Office officials, higher fees might cause authors and composers to submit works as collections rather than individual works. This would appear to reduce the Copyright Office's workload without reducing the works available to the Library.

16. We agree that projecting revenues depends on being able to project the number of applications and that cost recovery depends upon the public's being willing to pay the necessary fees. However, this is true of any

process—including patents and trademarks—where costs are recovered through user fees. Thus, it seems appropriate for the Congress to consider what it wants to achieve through the process and who should pay. The user then must determine whether the benefits are worth the costs. The real issue here is that, if fees are raised to a level necessary to make the Copyright Office self-sustaining, there may be uncertainties in projecting the fees that will be necessary initially because it may be difficult to predict the behavior of applicants. However, this also would appear to have been an issue for PTO as well—whose costs and fees are much higher—when it became self-sustaining. We do not believe that this concern should be a bar to the Congress's consideration of funding the Copyright Office through fees.

17. See comment 16.

18. Our report notes that the Register of Copyrights now supports making the copyright process self-sustaining within the Library. Furthermore, we do not use the term "official policy" in discussing the management report cited in the Library's comments. However, we believe that we are correct in citing the findings of the management report in our own report. The official identified in the Library's comments as "an advisor to the Librarian" was in fact a senior Library official and former Acting Register of Copyrights who was detailed by the Librarian to conduct the review of the Copyright Office's operations. The report was provided to us by the advisor himself and is identified on its face as a Library of Congress document. There are no references in the report to its being a draft, a personal opinion, etc. The report was used in a discussion we held with Copyright Office officials and the advisor as containing the positions of the Library, and we were given no caveats on its use. We have clarified our report to show that the management report is an internal Library of Congress document.

19. The Library states in its comments that the "implication in the report that full-cost recovery would be met if Congress's annual appropriation of $10 million could be eliminated is simplistic" and that there are broader issues at stake regarding who should pay costs of a public nature. We believe that the message in our report is accurate as presented: While the Copyright Office may "support the goal of moving toward full-cost recovery," it nevertheless has opposed its current costs being totally recovered through fees. We understand the Library's position that there are other costs allocated to the Copyright Office that are not directly related to the registration process; however, we note that this is also an

issue for the patent and trademark processes—where costs and fees are much higher.

Also, the Library's comments raise other issues. For example, it appears that there may be questions regarding what costs should be allocated to the copyright process. We agree that, in order to determine whether copyright costs should be recovered through fees, the costs actually attributable to the copyright process within the Library should be identified. Thus, if (1) the Library is providing services to the Copyright Office that are covered by Library-specific appropriations and (2) the Copyright Office is providing services under its own funding that are not directly related to the copyright process, there may be a need for some reallocation—an issue beyond the scope of this report. It is our understanding this issue will be addressed in the Copyright Office's planned study of costs and fees that, according to Library officials, will help the Copyright Office determine what costs should be charged to the copyright process and what costs should be recovered through fees. In the interim—and for the purposes of this report—we assumed the costs of the Copyright Office were the costs of the copyright process within the Library. Consequently, to become self-sustaining as now configured, fees would have to be increased to cover amounts now covered by Copyright Office appropriations.

Ultimately, deciding what should be recovered through fees is a matter of policy that only the Congress can determine. As noted by the Library in its comments, the Congress in the past has chosen to fund the copyright process through a combination of fees and appropriated funds. Our point is that—given the direction the Congress has now taken with patent and trademark fees as well as proposals by others that copyright fees be raised—the Congress may wish to consider this issue again.

20. See comments 12 and 19.

21. See comment 11. Our report notes that the Library normally takes only copies of published materials for its collections. Consequently, the Library's collections should not suffer from a fee increase because, even if there is a decrease in applications, the Library still would have access to all materials that are submitted for registration and is entitled by law to free copies of all works published in the United States even if not submitted for registration. In its comments, the Library says that it does not believe persons would comply with the provisions of section 407 to provide two copies of unregistered publications. We have no way to

confirm or dispute this belief. However, if there is a problem, it would require the offending party to decide not to publish, not to seek registration, or to ignore the law and face penalties. Ultimately, the question is to what extent eliminating the risk is worth the cost, and again, this is an appropriate matter for the Congress to consider.

22. The Copyright Acquisition Division may be an example of a cost to the Copyright Office that is not directly tied to the copyright process if, as noted in the Library's comments, it "exists for the purpose of requesting or demanding deposits not sent in voluntarily that are identified as desirable for the Library's collections." If not related to the copyright process, this cost might be allocated to the Library, thereby reducing by about $1 million the copyright fees that would be necessary to recover costs.

23. Our report does not intend to imply that the Register "misled the Senate Judiciary Committee." Rather, as discussed in our report, we do not believe that the fee projections were presented in the proper context. If, as stated in the Library's comments, the Register "has an obligation to present to the Congress the worst-case scenario that could result from their proposed legislation," we believe that the Register also had an obligation to disclose that it was in fact the worst-case scenario and that, under different assumptions, other less costly scenarios could be projected. Instead, her written testimony stated, "(O)ur preliminary analysis indicates that, if our operational costs otherwise remained the same, becoming self-supporting outside of the Library would entail a five-fold increase in fees (from $20 to the $100 range)." During the discussion period following the delivery of the prepared statement, the Chairman questioned the Register concerning her use of the worst-case scenario among many different possibilities. The Chairman also questioned why the Register found the most drastic of all estimates provided by the Copyright Office study to be the minimum. As noted above, the Chairman also told the Register he had asked GAO to look into the fees issue.

24. See comment 23.

25. We do not question these other scenarios in the report because they were not presented at the hearing. We do not accept them as fact but note only that the Register made no mention of them.

26. See comments 23, 27, 28, 29, and 30.

27. We take no position on the merits of S. 1961. However, if the Copyright Office had problems with the proposed legislation such as the one cited—having each of the three agencies cover one-third of overhead costs when their overhead-related costs would vary—this is the very type of issue that should be surfaced in a hearing such as the one held. In fact, we believe that all of the issues raised in the Library's comments regarding the effect of a fee increase or organizational move on applications, costs, the Library's collections, accounting standards, etc. were appropriate issues to be raised. This is why we believe the Register should have presented cost projections under various assumptions rather than stating that fees would increase fivefold.

28. In our report, we note not only that the Register presented the worst-case scenario at the hearing but also that some of the costs and application estimates used in the scenario were questionable. As one example, we noted that the projection included moving into new space at a cost of $32 per square foot and did not address the savings that might be possible if the Copyright Office were to remain located in Library space at no cost. In its comments, the Library said that, to its knowledge, housing an executive agency within a legislative entity is unprecedented in the history of the U.S. government and that doing so would contradict Statement of Federal Financial Accounting Standards number 4. The Library said that to "expect the Copyright Office to contemplate such an unprecedented move" was unwarranted.

Our report does not say we expect the Copyright Office to contemplate remaining in Library space at no expense nor do we believe the Copyright Office should contradict federal cost-accounting standards. Again, our concern is that these issues should have been raised in a proper context at the hearing instead of simply stating fees would have to increase fivefold.

We do not take any position on whether the Copyright Office could remain in Library space if it had become a part of the IPO. This issue is moot, because there is no current proposal to make the Copyright Office part of a wholly-owned government corporation. However, the Congress could have allowed the Copyright Office to be housed rent-free at the Library if the Congress wanted to do so, particularly considering the Library was to continue to receive free materials worth $13 million a year. Similarly, the Congress could have provided for the Library's and the Copyright Office's sharing other items, such as computer systems. Again, the issue is that we believe the Register should have placed her projections within a better framework.

Concerning cost-accounting standards, our report does not suggest—nor do we in any way support—the Copyright Office's not following applicable standards. Any discussion of specific cost-accounting standards is beyond the scope of this report.

29. Our point is that, if applications decrease, workload should decrease. We do not suggest the Copyright Office would have been able to decrease staffing but rather note that this issue was not discussed when the Register presented her projections on the impact of a fee increase at the hearing.

30. See comment 28.

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