



AUTHORS
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Regan A. Smith
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

By Electronic Submission

RE: Comments to Notice of Proposed Rulemaking for Copyright Office Fees

Dear Ms. Smith:

Authors Alliance appreciates the opportunity to offer comments in response to the United States Copyright Office's Notice of Proposed Rulemaking for Copyright Office Fees.¹ Authors Alliance is a nonprofit organization representing the interests of authors who want to take advantage of opportunities of the digital age to share their creations with readers, promote the ongoing progress of knowledge, and advance the public good.² Authors Alliance believes that registration and recordation benefit authors and the public. For this reason, we respectfully urge the Copyright Office to adopt a fee schedule that accommodates all authors, including authors with works of unproven or low commercial value.

Among other educational efforts, Authors Alliance provides resources and tools to help authors understand the benefits of registering works, how to register works, and when to update or supplement a registration.³ Our resources emphasize the importance of registration and recordation to creating a public record of copyright ownership, enabling would-be users of works to identify and locate the copyright owner in order to ask for permission or a license to make uses that are within the copyright owner's exclusive rights, to provide attribution to the author, or to discover when a work is in the public domain. These resources also explain that some benefits are dependent on registration or recordation and that recordation is required to exercise some rights—such as the right to terminate transfers.⁴

¹ Copyright Office Fees, 83 Fed. Reg. 24054 (May 24, 2018).

² For more information about Authors Alliance, see Authors Alliance, *About Us*, www.authorsalliance.org/about/.

³ Authors Alliance, *Copyright Fundamentals*, <https://www.authorsalliance.org/resources/copyright-fundamentals/>.

⁴ Authors Alliance provides guidance and templates for providing notice of termination to rightsholders and recording the termination with the U.S. Copyright Office. See Sean Doran et. al, Termination of Transfer: Information and Templates for Notices of Termination Under § 203 and § 304(c), <https://www.authorsalliance.org/wp-content/uploads/2018/03/20180315-ToT-Templates.pdf>.

Because of the benefits associated with registration and recordation, we ask the Office to consider implementing further differentiated fees to make registration and recordation affordable to all copyright owners, especially to those whose works have an unproven or low commercial value. As the Office acknowledges, “when fees are set too high, potential users—including non-profit or non-commercial users—will be unable or unwilling to pay and simply will stop participating at all and the public record will suffer.”⁵ There is strong precedent for differentiated fees in other areas of intellectual property, namely patents and trademarks.⁶ At minimum, we suggest that the Office consider ways to differentiate fees for recording terminations of transfers and to further differentiate fees for registration.

Differentiated Fees for Recording Terminations of Transfers

We are especially concerned with the high cost of recording terminations of transfers.⁷ The termination of transfer provisions of the U.S. Copyright Act offer creators the opportunity to renegotiate contracts to realize monetary rewards, but this is not the only benefit of termination provisions. Termination rights also give creators the ability to regain rights to works that have outlived their commercial lives but are nonetheless historically and culturally valuable. For creators who want their works to be widely shared and enjoyed beyond their commercial life (after a book has fallen out of print, for example),⁸ terminating transfers is a powerful option to get their works back in front of audiences. These creators or their heirs might choose to make their terminated works available to the public on open terms. In this way, terminations of transfers can help authors ensure that their works’ continuing impact and relevance are not limited by their commercial lives. In turn, the public benefits from ongoing access to knowledge and culture. While the proposed new fee of \$125 to record a notice of termination may not deter creators who want to get rights back in order to exploit more of the work’s commercial life, it is a barrier for some authors who want to get their rights back to dedicate the work to the public.⁹

One way to accommodate the needs of authors who are not exploiting the commercial value of their works is to provide for differentiated fees. Indeed, the Office’s 2016-2020 strategic plan anticipates fee differentiation by entity size, including “appropriate differentiations between large and small actors” and “appropriate accommodations for small actors.”¹⁰ But there is no fee accommodation for small creators recording terminations of transfers, or for creators who do not

⁵ Copyright Office Fees, 83 Fed. Reg. at 24056.

⁶ See Robert Brauneis, *Properly Funding the Copyright Office: The Case for Significantly Differentiated Fees*, GWU Law School Public Law Research Paper No. 2017-58, at 23 (July 4, 2017), available at https://scholarship.law.gwu.edu/faculty_publications/1298/.

⁷ Authors Alliance has resources to help authors understand and exercise termination of transfer rights. See Authors Alliance, *Termination of Transfer*, <https://www.authorsalliance.org/resources/termination-of-transfer/>.

⁸ See Paul J. Heald, *How Copyright Keeps Works Disappeared*, 11 J. of Empirical Legal Stud., 829 (2014).

⁹ This sum is not insubstantial, even for successful authors. By way of example, author Neal Gabler identifies as a part of the nearly half of Americans who would have trouble finding funds to pay for a \$400 emergency. See Neal Gabler, *The Secret Shame of Middle-Class Americans*, The Atlantic (May 2016), available at <https://www.theatlantic.com/magazine/archive/2016/05/my-secret-shame/476415/>.

¹⁰ United States Copyright Office, *Positioning the United States Copyright Office for the Future: Strategic Plan 2016-2020*, at 43 (December 1, 2015), available at <https://www.copyright.gov/reports/strategic-plan/USCO-strategic.pdf>.

intend to further monetize their works. Appreciating that the Office seeks to balance its cost-recovery goals with the price elasticity of demand for the Office’s services, we ask the Office to explore ways to offset lower fees for recording terminations of transfers for works that will not be further commercialized with higher fees for works with enduring commercial value.

Differentiated Fees for Registration

We are also concerned with the proposed increase in fees for registration. As outlined above, registration opens up significant benefits for authors. Without a public record of ownership, authors can miss out on the chance to grant permission for uses they would welcome (perhaps even without payment) and would-be users may abandon potential onward uses of the work. We appreciate that the Office considers the proposed new fee of \$55 to electronically register a single work a “significant subsidy intended for smaller creators.”¹¹ But this fee is still a hurdle for many creators and a substantial increase from the current rate of \$35.

Another approach for differentiated fees for registration, proposed by Robert Brauneis, is “to charge tiered registration fees for different statutory damage ceilings, or different packages of registration benefits more generally.”¹² In this way, “[r]egistrants who believe that their works are likely to be of lower value, or who are not particularly interested in protecting the copyright value of their works, could pay substantially less for registration, while receiving a registration with a lower statutory damages ceiling.”¹³ While this approach would require legislative action, we encourage the Office to consider this and other ways to differentiate fees to accommodate all creators’ needs in order to maximize participation in the registration system and provide the public with information about the largest possible number of works.

We hope our comments will be helpful as the Office considers the adoption of a new fee schedule.

Respectfully submitted,



Brianna Schofield
Executive Director, Authors Alliance

¹¹ Copyright Office Fees, 83 Fed. Reg. at 24057.

¹² Brauneis, *supra* note 6, at 23.

¹³ *Id.* at 24.