

a distributed collection of converted library materials and digital originals to which many American institutions will contribute. The Library of Congress' contribution to the World Wide Web-based virtual library is called American Memory and is created by the Library's National Digital Library Program. Non-profit cultural repositories in the United States with collections of primary resources that are significant for education and research in United States history and culture are eligible to apply to the LC/Ameritech Competition. Collections that are digitized with awards from this competition must be distributable on the Internet.

Applications from Association of Research Libraries (ARL) and non-ARL institutions will be evaluated separately, in order to encourage applications from a variety of institutions. In the final selection among meritorious projects, consideration will be given to the historical subjects emphasized in the guidelines and to the size, type, and geographical location of the applicant institution. The evaluation criteria is as follows:

- The significance of the collection's content for understanding United States history and culture, as well as its breadth of interest and utility to students and the general public.
- The availability and usability of aids to intellectual access that can be integrated into the American Memory resource.
- The technical and administrative viability of the project's plan of work in relation to the scope of the project.

Applications will be evaluated by scholars, educators, librarians, archivists, administrators, and technical specialists external to the Library of Congress. Evaluators will be convened by George Farr, Director of the Division of Preservation and Access of the National Endowment for the Humanities and by Deanna Marcum, President of the Council on Library and Information Resources.

Only costs directly associated with digital conversion may be included in the request. Equipment may not be purchased with award funds. The 1998/99 Guidelines and Application Instructions are available online to view or download from the Library of Congress/Ameritech National Digital Library Competition Web page (<http://memory.loc.gov/ammem/award>).

Dated: August 3, 1998.

**James H. Billington,**  
*Librarian of Congress.*

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BILLING CODE 1410-10-P

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 98-2B]

#### Fees

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed fee increase and public hearing.

**SUMMARY:** The Copyright Office issues this notice to inform the public that the Office will hold a public hearing in the course of a rulemaking proceeding during which the Office proposes to increase the fees set forth in 17 U.S.C. 708(a). The proposed fees would recover a significant part of the cost to the Office of registering claims, including supplementary and renewal claims, of recording documents, of issuing receipts for deposits, of issuing additional certificates, and of making and reporting searches.

**DATES:** A public hearing will be held on Thursday, October 1, 1998, beginning at 10:00 a.m. in Dining Room A, 6th Floor, (yellow core) of the James Madison Memorial Building, of the Library of Congress, First Street and Independence Avenue, S.E., Washington, D.C. 20559-6000. Anyone desiring to present oral testimony should notify the Copyright Office by no later than September 10, 1998. Written comments are invited from both those who wish to testify and those who plan only to file initial or reply comments. All initial written comments must be filed on or before September 18, 1998. All reply comments must be filed on or before October 15, 1998.

**ADDRESSES:** Those who wish to present oral testimony should notify Marylyn Martin, Office Manager, Office of the General Counsel by fax (202) 707-8366 or by telephone (202) 707-8380. Interested parties should submit an original and fifteen copies of written comments. If delivered BY MAIL, address to Office of the General Counsel, GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered BY HAND, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, S.E., Washington, D.C. 20559-6000.

#### FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380; Telefax: (202) 707-8366.

## SUPPLEMENTARY INFORMATION:

### I. Background

#### *Benefits of Registration and Recordation*

Copyright is secured automatically when the work is created, that is, fixed in a copy or phonorecord for the first time. This protection generally lasts for the author's life plus an additional 50 years after the author's death, or if the work is made for hire, for a term of 75 years from publication or 100 years from creation, whichever is shorter. The rights granted to authors are broad and protection is worldwide because of multilateral and bilateral treaties.

Registration of claims to copyright and recordation of transfers of copyright ownership are optional.<sup>1</sup> However, there are certain benefits. Registration establishes a public record of the copyright claim; this record includes the name of the author, the name and address of the claimant (owner), the type of authorship and the scope of the claim, and the date and nation of first publication, if applicable. A bibliographic entry prepared by the Cataloging Division is available online through the Copyright Office's website.

Registration made within three months after publication of the work or before an infringement of the work will entitle the copyright claimant to statutory damages and the possibility of recovering attorney's fees. Statutory damages are an important remedy because it may be difficult to prove the extent of the economic injury that the infringement has caused. Statutory damages allow the court to consider what is just compensation rather than actual damages. With respect to attorney's fees, timely registration makes this remedy a possibility. A court is not obliged to award reasonable attorney's fees and is authorized to do so only to the prevailing party.

If a work is registered before or within five years of publication, registration will establish *prima facie* evidence in court of the validity of the copyright and the facts stated in the certificate. Although such evidence is rebuttable, the *prima facie* status is valuable; this is especially true when infringement takes place years after the work was published, when facts are sometimes difficult to ascertain and prove. With respect to the copyrightability of the work, the registration is important. The Office examines a work and issues a

<sup>1</sup> In a recent case, a court found that Federal copyright law takes precedence over state laws having to do with the legal validity of any legally recognizable interest in or share of ownership in copyright. Documents having to do with security interests in copyright may be recorded in the Copyright Office.

certificate only when it determines that the work deposited represents copyrightable authorship and that the other legal and formal requirements of the law have been met. The Office's decisions are accorded great weight by courts; generally, their review of Office determinations is limited to the high standard of "abuse of discretion," meaning that a court will defer to the expertise of the Office unless the registration or refusal to register is considered so arbitrary that the court determines it to constitute an abuse of the Register's discretion.

Additionally, the Copyright Office develops, services, preserves and stores the official records, which include the original application for registration, the deposit copies or phonorecords not selected by the Library for its collections or exchange programs or identifying material submitted in place of actual copies or phonorecords, any correspondence concerning the copyright claim, and an online catalog consisting of bibliographic records. Copies of unpublished works must, by law, be retained for the entire life of the copyright. Published works are retained for the period determined practicable by the Register and the Librarian, which at present is five years from the date of deposit unless the work is a pictorial, graphic, sculptural or architectural work where the retention period is 10 years. This material may be inspected by the public. Copies of records other than deposit materials may be requested and can be certified. With respect to deposit materials, the Office provides certified and uncertified copies of materials within the custody of the Office when certain conditions are met.

With respect to transfers of copyright ownership, although recordation is not mandatory, there are several advantages. For example, recordation can, under certain conditions, establish priorities between conflicting transfers, or between a conflicting transfer and a nonexclusive license. Recordation can provide the advantage of according a document "constructive notice"—a legal concept meaning that members of the public are deemed to have knowledge of the facts stated in the document; in other words, they cannot claim they were unaware of the document or its contents.

The Office does not attempt to judge the legal sufficiency of a document; it does check to see that certain requirements are met and verifies certain information. Documents accepted for recordation are numbered, imaged, and indexed under the titles and names they contain for the public record. The original document is

returned to the sender with a certificate of record bearing the date of recordation and the volume and page number where the document can be located. Information about recorded documents is available on the Office's Website; recorded documents are available for inspection and copies of such documents may be made or requested.

#### **History of Copyright Fees in Relation to Costs of Providing Services**

In 1870, Congress centralized registration of copyrights in the Library of Congress. The fee for registering a claim to a copyright was set at fifty cents, an amount sufficient to cover the entire cost of registration at that time. Copyright fees were increased in 1909 and 1928, and the Copyright Office remained self-sufficient until 1942, when, for the first time, revenues fell short of expenditures. Another increase in 1948 brought income above expenditures again, but only for one year. From that time, fee increases were never sufficient to cover all of the Office's operating costs, and the percentage of costs covered by income eroded greatly between legislated fee increases.

In 1965, a fee increase from \$4 to \$6 brought income from 62% to an estimated 80% of expenses. A 1978 fee increase to \$10 brought revenues to about 80% of costs, but by 1989, revenues had again diminished to a new low of 40% of costs. The most recent fee increase, to \$20, enacted in 1990 and made effective in 1991, raised income to about 65% of expenditures; the House Judiciary Committee defeated an amendment to increase the fee to \$30, which would have achieved full-cost recovery. H. Rep. No. 279, 101st Cong., 1st Sess. 4 (1989).

#### *History of the Fee Structure*

The 1990 legislation adjusted all of the copyright fees enumerated in the copyright law and also gave the Copyright Office authority to adjust fees at five-year intervals, based upon the change in the Consumer Price Index. Public Law 101-318, 104 Stat. 287 (1990). Under this authority, in 1994, the Acting Register of Copyrights appointed an internal committee to study costs and recommend revised fees. The committee examined what 17 U.S.C. 708(b) would permit as a statutory fee increase, and comprehensively analyzed the costs to the Office of providing special services. In 1994, the Copyright Office increased fees for special services.<sup>2</sup> As a result of

<sup>2</sup>Special service fees are not at issue here. They were again increased effective July 1, 1998.

the committee's analysis, the Acting Register concluded that a 1995 increase in statutory fees to the limit permitted under 17 U.S.C. 708(b) would be minimal and would not be cost effective given the administrative costs associated with increasing fees. The Office did not increase fees in 1995 and was unsure what years would be computed in increases to the Consumer Price Index the next time it increased fees; consequently, it sought a clarifying legislative amendment. The current fee proposals resulted from that effort.

#### *The Fee Structure Enacted in 1997*

Amendments to the copyright fee structure were made part of the Technical Amendments Act which was enacted on November 13, 1997, Public Law 105-80, 111 Stat. 1529 (1997). Among other things, this Act revised 17 USC 708(b) and set out specific guidelines for the Copyright Office to change the fees specified in the statute. It authorized the Register to adjust fees to recover a greater percentage of the Office's costs of providing services. The main directives of this Act are:

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

#### *Copyright Office's Response*

In the spring of 1997, while Congress was considering the proposed fee legislation that became part of the Technical Amendments Act, the Register conferred with the Director of the Library's Financial Services Directorate (FSD) on how to proceed. Based on this discussion, the Register appointed a group of Copyright Office staff members to conduct a fee study and to recommend appropriate fee changes. With the advice of FSD, the

pursuant to a Notice of Proposed Rulemaking (NPR) published April 1, 1998, 63 FR 15802 (April 1, 1998), and final rule, 63 FR 29137 (May 28, 1998).

Copyright Office hired two consulting firms, Abacus Technology Corporation (Abacus) and Ron Young, with expertise in cost accounting and federal cost accounting regulations to assist in this effort.

On March 25, 1998, the Office's Fee Analysis Task Group (FEATAG) submitted a report to the Register of Copyrights. The report presented the results of the commissioned economic study and analysis of the costs that the Copyright Office incurs in registering claims, recording documents, and providing related services, and recommended a new schedule of fees.

The core of the economic study and analysis was done by Abacus, a private consulting firm who developed a methodology for determining the Office's full costs and the fees required to recover part or all of the costs.

Abacus documented all of the Copyright Office costs. The Office determined that some costs not related to providing specified registration and related services should not be included in the study. It directed Abacus to exclude all Licensing Division and Copyright Arbitration Royalty Panel (CARP) unit costs since they are paid from other appropriated funds. It also directed Abacus to exclude policy costs, the costs of the Copyright Acquisitions Division, whose primary responsibility is securing copies of works published in the United States that have not been deposited for the Library of Congress' collections, and certain overhead expenses associated with these activities. Policy expenses excluded certain staff from the Office of the General Counsel and the Public Information Office and all Policy and International Affairs staff.

The study used the activity based costing (ABC) methodology approved under the new managerial cost accounting standards as described in Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, no. 4, published by the Office of Management and Budget, on July 31, 1995. Under this approach, resource costs were assigned to activities, and activities were assigned to specified services. Most Copyright Office activity costs were directly related to fee services. Certain general and administrative costs related to fee services were treated as indirect costs and were allocated proportionately across all fee services.

Based on those cost parameters, Abacus proposed the fees which were presented in its report. Ron Young and Associates reviewed the Abacus report for compliance with the new federal

financial accounting standards. FEATAG's final report to the Register made recommendations on the fees based upon Abacus's cost determinations and policy factors such as fairness, equity, and the objectives of the copyright system, with adjustments for elasticity in demand for services. This report is available on the Copyright Office's website via the Internet.<sup>3</sup>

#### *Fee Policy Considerations*

In developing its fee recommendations, FEATAG considered several policy issues on fees and fee structures, both from the point of view of equity and fairness and of practicality and potential administrative burden. The Office resolved three of these policy issues as follows:

1. Basic filing fee. Should the basic filing fee be the same for all administrative classes of material, e.g., Class TX (literary works), Class VA (pictorial, graphic, sculptural and architectural works), Class PA, works of the performing arts including but not limited to music, lyrics, choreography, motion pictures and other audiovisual works), Class SR, (sound recordings); and all types of work within a given class, e.g., poems, databases, novels, computer programs, illustrations, sculptures, photographs, feature films, instructional television programs? Or should a distinction be made based on the Office's administrative classification or alternatively on the type of the work?

The Office concluded that for administrative efficiency, generally the fees should be the same for all types and all classes of works. With respect to types of works, in order to institute different fees for types of works within a class, the Office would need to develop separate applications. Additionally, distinguishing different types of works is not always easy. What is a feature film? What is an instructional television program? With respect to administrative classification, many works contain authorship in more than one class, and filers are asked to choose the class representing the preponderance of material. Claims filed correctly but submitted on the wrong application are generally registered without question. The Office does not wish to "measure" content to determine whether the correct class was chosen and perhaps to assess a higher fee. Further, it prefers that filers not be influenced by a lower fee to select an inappropriate application form.

<sup>3</sup>The full FEATAG report may be accessed at <http://lcweb.loc.gov/copyright>. In addition, both the FEATAG Report and ABACUS Report are available for inspection and copying in our Public Information Office, 101 Independence Avenue, S.E., LM-402, Washington, D.C. 20540 between 8:30 a.m. and 5:00 p.m. Eastern time Monday thru Friday except holidays.

2. Published versus unpublished. Should there be different fees for published or unpublished works?

The issue can be looked at from two different perspectives—one argues for a higher fee for unpublished works; the other argues for a higher fee for published works. The first argument is that the cost of processing a claim in an unpublished work is higher than the cost of processing a claim in a published work; additionally, the Office is required to store a copy of the unpublished work for the life of the copyright. In the case of published works, the Office either doesn't store the material because it has been selected by the Library or stores it for a limited number of years. The second argument is that published works have entered the stream of commerce and may be earning royalties or other income. Therefore, at the time of registration, the copyright in a published work arguably is more valuable than the copyright in an unpublished work.

After much discussion, the Office decided that different fees based on the status of the work could not easily be justified; moreover, there would be a considerable administrative burden in such a fee structure. Therefore, the Office decided not to propose different fees based on the publication status of a work.

3. Works made for hire versus independently authored works. Should a greater fee be charged for works made for hire?

There was considerable discussion on whether there was a basis to charge a higher fee for works made for hire. However, again the administrative burden of different fees coupled with some uncertainty concerning the authorship status on the part of many registrants, led us to reject any differentiation.

#### *Discussions of Copyright Objectives and Fairness and Equity*

In May of 1998, the Register contacted representatives of interested groups who register claims to offer them the opportunity to meet and discuss the forthcoming fee increases and to voice their membership's initial concerns. A number met with the Register; others submitted comments.

These representatives suggested several alternatives to the fee schedules offered by ABACUS and/or recommended by FEATAG. Various groups representing individual authors told the Office that the fee suggested in the FEATAG report, \$45, was too high. They stressed the importance of keeping the registration fee low to keep

registration affordable. Several representatives cautioned that income from statutory fees should be used only for providing the direct service, e.g. registration, recordation, certification. A few spokespersons indicated that most of their members do not register under the current registration procedures for various reasons and anticipated that higher fees will result in even fewer registrations.

Several representatives suggested that there should be more group registration opportunities to ease the burden and cost of registering. One indicated that a doubling of the current fee would be satisfactory, but only if this group of authors could register a very large number of images for one fee. Other spokespersons questioned why those who register daily newsletters must pay more than those who register daily newspapers under the existing fee schedules.

Other suggestions were that the Office keep basic registration and recordation fees low and seek increased revenues from special services, i.e., raise the fees even more for special handling and other special services, consider volume discounts for quantity registrations, balance an increase in fees with a discount for each registration filed by those with deposit accounts, and provide reduced fees for those who use the electronic registration and deposit system when this is available for users. Another suggested that the Office increase fees for registrations by those who commercially exploit works such as publishers or motion picture companies. Several suggested providing an exemption for small businesses. One representative suggested a "means test" to determine the ability of the individual author to pay. Another suggested assessing the fee at a level commensurate with the value of the work.

## II. Current Initiatives and Office's Initial Response to These Concerns

### *Existing Registration Options*

The Office wants to keep fees within a reasonable range in order to encourage registration and increase the value of the public record. Consequently, the Office has explored the possibility of providing registration at a lower fee for claims by individual authors.

The Office notes that it already offers two registration options that benefit individual authors who wish to register more than one work.

(1) Unpublished works can be assembled into a collection and registered as a single work under a collective title. The Office examines the claim for copyrightability of the

whole and does not identify any works within the collection that may not be independently copyrightable. Only the collection titles are cataloged; individual titles are not cataloged, even when listed on the application. The option does, however, provide an economical means of registering a number of unpublished works.

(2) Contributions to periodicals can be registered on a single application and with a single fee. This option is provided for in section 408(c)(2) of the law; it offers a single registration for works that were first published as contributions to periodicals, including newspapers, within a twelve-month period.

The Office is considering offering another form of group registration for unpublished works by individual authors. This option would permit registration of up to ten unpublished works in one class, listed by title on the form, and each examined for copyrightability by the Copyright Office. Each title would appear on the certificate of registration and be entered into the Catalog of Copyright Entries. The fee would be determined by the number of items in the group, with a minimum fee not less than the fee for a single work.

### *Special Fee for Daily Newsletters*

The Office considered the request to include daily newsletters with daily newspapers instead of with other serials but concluded that daily newsletters should continue to be assessed the same fees as other serials. The Office is not proposing to change the existing fee for serials other than to increase the minimum number of works that can be registered in one group. The special newspaper fee is only available to newspapers who are willing to provide the Library of Congress with a microfilm deposit that meets certain archival standards; the cost of preparing such copies generally is between \$1000 and \$1200 per year. Moreover, this deposit exceeds the deposit requirements set forth in the law.

### *Offering Additional Group Registrations*

The Office included group fees in this NOPR, although they are special services rather than statutory ones in order to propose increases to all filing fees at the same time. It is currently considering additional group registration options. When it is ready to publish these new group options, the Office will need to amend its regulations. At that time, these options and their accompanying fees will be addressed in a separate rulemaking proceeding.

### *Assessing a Short Fee Service Charge*

The Office notes that it increased certain fees for special services in an earlier rulemaking, including proposing for the first time a charge of \$20.00 for submitting a fee that is insufficient to cover the requested service after the new fees go into effect. This short fee will only be assessed for fees that go into effect in 1999 and will only be assessed for insufficient payments made beginning six months after from the effective date of the new fees.

### *Reduced Rate for Individual Authors*

In order to respond to the plea on behalf of individual authors to keep registration within reach financially, the Office proposes an alternate schedule of fees including a reduced fee for unpublished single works, not including collections registered under a single title, of which the author is an individual (not an employer for hire) and where the author is claiming copyright. The reduced fee, proposed at \$35 for individuals, would negatively affect the Office's income.

To determine the impact on the Copyright Office's income the Office reviewed a number of registrations completed in 1997 in each of the unpublished series TXu, VAu, PAu, and SRu to see what percentage would have qualified for the reduced fee had it been available. Applying the percentages to the projected receipts for Fiscal Year 2000, the Office would forfeit \$1.4 million in income by adopting the reduced fee for individual authors. This loss of income would be much greater if the lower fee for individuals were applied to collections, to published works, or to unpublished works by joint individual authors all of whom were claiming copyright. The Office is, therefore, not proposing to offer the reduced fee for these categories.

The second fee schedule shows the adjustment that would have to be made in fees for other claims to make up for the income lost through this accommodation. Those claims in Classes TX, VA, PA, and SR that did not qualify for the reduced fee would be subject to a higher fee of \$50. The Office proposes keeping the fee for serials at \$45. The lower fee for serials is justified by the lower cost to process them.

## III. Proposed New Statutory and Filing Fees

Based on the discussions thus far and the analysis done by the Office, the Office is proposing two different fee schedules. Schedule I contains the fees suggested by the FEATAG report, rounded to the nearest \$5. Assessment

of fees at the level proposed in Schedule I would enable the Office to recover a significant portion of the costs of providing these services and thus fulfill its congressional mandate. Schedule II includes a reduced fee for individual

authors who meet the criteria set out above and adjusts other fees accordingly to recover the revenue lost to the Office by this adjustment.

The Office is not proposing any changes at this time for Recordation of

Notices of Intent to Enforce copyrights restored under the Uruguay Round Amendments Act and group registration of serials.

SCHEDULE I

Statutory service with no special rate for individual authors	Proposed fee
Registration of a claim in literary materials other than serials (Form TX) .....	\$45.
Registration of a claim in a serial (Form SE) .....	45.
Registration of a claim in a work of the performing arts, including sound recordings and audiovisual works (Form PA) .....	45.
Registration of a claim in a work of the visual arts (Form VA) .....	45.
Registration of a claim in a group of contributions to periodicals (GRCP), including group renewals .....	3/contribution-45 minimum.
Registration of a renewal claim (Form RE)	
• Claim without addendum .....	45.
• Claim with addendum .....	60.
Registration of a correction or supplement to a claim (Form CA) .....	65.
Registration of a claim in a group of serials, including daily newsletters, (Form SE/Group) .....	10/issue-45 minimum.
Registration of a claim in a group of daily newspapers (Form G/DN) .....	55.
Registration of a restored copyright (Form GATT) .....	45.
Registration of a claim in a group of restored works (Form GATT/Group) .....	10/claim-45 minimum.
Providing an additional certificate of registration .....	25.
Any other certification .....	65.
Search—report prepared from official records (per hour) .....	65.
Search—locating records (per hour) .....	65.
Recordation of document (single title) .....	50.
• Additional titles (per group of 10 titles) .....	15.
Recordation of Notices of Intent to Enforce (NIEs) (single title) .....	30.
• Additional titles .....	1.

SCHEDULE II

Statutory service with a special rate for individual authors	Proposed fees
Registration of a claim in a single work submitted by a qualified individual author in classes TX, VA, PA, and SR .....	\$35.
Registration of a claim in literary materials other than serials (Form TX) .....	50.
Registration of a claim in a serial (Form SE) .....	45.
Registration of a claim in a work of the performing arts, including sound recordings and audiovisual works (Form PA) .....	50.
Registration of a claim in a work of the visual arts (Form VA) .....	50.
Registration of a claim in a group of contributions to periodicals (GRCP), including group renewals of contributions to periodicals.	As in Schedule I.
Registration to a renewal claim (Form RE)	
• Claim without addendum .....	45
• Claim with addendum .....	60
Registration of a correction or supplement to a claim (Form CA) .....	As in Schedule I.
Registration of a group of serials, including daily newsletters (Form SE/Group) .....	Do.
Registration of a group of daily newspapers (Form G/DN) .....	Do.
Registration of a restored copyright (Form GATT) .....	Do.
Registration of a group of restored copyrights (Form GATT/Group) .....	Do.
Providing an additional certificate of registration .....	Do.
Any other certification .....	Do.
Search—report prepared from official records (per hour) .....	Do.
Search—locating records (per hour) .....	Do.
Recordation of a document (single title) .....	Do.
• Additional titles (per group of 10 titles) .....	Do.
Recordation of Notices of Intent (NIEs) (single title) .....	Do.
• Additional titles .....	Do.

IV. Request for Comments

The Office seeks comments on the suggestions made by the parties and the fee schedules proposed above. The Office also seeks comments on the following specific questions:

1. Do you agree that individual authors of unpublished works should

pay a lower registration fee? If so, why? If not, why not?

2. Are there other distinctions that the Office should make in assessing fees?

• Should a corporation with a certain net worth pay more than others? Should there be a small business exemption? If so, how should this be determined?

• Should a distinction be made between published and unpublished works in setting registration fees? If so, is this equitable given the fact that many commercially valuable works, including computer programs, databases, and motion pictures, are often registered in unpublished form?

- Should there be a higher fee for works made for hire?

3. The Office did not suggest different fees for different classes or types of works. Instead for administrative efficiency and cost concerns, it suggested the same fee for all classes and types of works (except serials). Do you agree with this decision? If not, how would you recommend structuring the fees and why?

4. Are there other practical alternatives for fee increases that will allow the Office to recover its reasonable costs?

5. Based on the fees proposed in Schedule I, who is unlikely to register? Based on the fees proposed in Schedule II, who is unlikely to register?

6. In assessing fees for the registration and related services detailed in the schedules set out above, the Office concluded that certain costs should be recovered through appropriations. It also distinguished between direct and indirect costs in assessing what costs should be recovered. Do you agree with the Office's exclusion of such costs in assessing fees for registration and related services? If not, why not?

7. Are any of the specified fees too high? If so, why?

Dated: August 6, 1998.

**Marybeth Peters,**

*Register of Copyrights.*

Approved By:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 98-21738 Filed 8-12-98; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[IA 98-024]

### Leland H. Brooks; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

#### I

Leland H. Brooks was an employee of Westinghouse a contractor to Pacific Gas & Electric Company (PG&E) at the Diablo Canyon Nuclear Power Plant (Diablo Canyon). PG&E holds NRC license Nos. DPR-80 and DPR-82, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Units 1 and 2 of the Diablo Canyon facility in accordance with the conditions specified therein.

#### II

On April 16, 1997, Mr. Brooks, a millwright, was granted temporary unescorted access to Diablo Canyon as an employee of Westinghouse. PG&E terminated Mr. Brooks access to Diablo Canyon on May 21, 1997, upon completion of the work Mr. Brooks was hired to perform. PG&E's decision to grant Mr. Brooks unescorted access was based on the information Mr. Brooks provided in a signed Personnel Access Questionnaire dated April 7, 1997, including information Mr. Brooks provided about his arrest record. In addition to requesting information about any arrests, this questionnaire clearly stated, "For all arrests and/or convictions that occurred in the last five years, a copy of your court orders must be provided with this application." Mr. Brooks wrote "None" next to this statement. On July 22, 1997, approximately two months after Mr. Brooks' access to Diablo Canyon had been terminated, PG&E received information from the Federal Bureau of Investigation (FBI) which indicated that Mr. Brooks had failed to inform PG&E of several arrests and convictions, including a 1995 felony charge which was still pending. PG&E conducted an investigation and determined that Mr. Brooks knowingly withheld and/or falsified information on the Personnel Access Questionnaire. On August 6, 1997, PG&E issued Mr. Brooks a letter informing Mr. Brooks of this conclusion and denying Mr. Brooks future access to Diablo Canyon.

The deliberately false information that Mr. Brooks provided to the licensee, as well as the failure to provide copies of the required court records, were violations of 10 CFR 50.5, "Deliberate Misconduct." Specifically, Section 50.5(a)(2) provides, in part, that an employee of a contractor to a licensee may not deliberately submit to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false and incomplete information that Mr. Brooks submitted was material because PG&E is required to consider criminal history in making a determination as to whether to grant unescorted access in accordance with 10 CFR 73.56.

On April 27, 1998, the NRC issued a letter to Mr. Brooks, informing Mr. Brooks that the NRC was considering escalated enforcement action against him and providing Mr. Brooks a choice of requesting a predecisional enforcement conference or submitting a written response. Although Mr. Brooks telephoned the NRC regional office and

stated that he didn't recall ever working at the Diablo Canyon nuclear power plant, he has not submitted a written response or requested a predecisional enforcement conference, and he has not provided any evidence to support his claim. The NRC's letter to Mr. Brooks informed him that in the absence of a response, we would proceed with enforcement action.

Based on the above, the NRC has concluded that Mr. Brooks engaged in deliberate misconduct by deliberately omitting criminal history information when completing a Personnel Access Questionnaire to gain unescorted access to the Diablo Canyon nuclear power plants. The NRC must be able to rely on employees of licensees and their contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Brooks' action in deliberately providing false information to the licensee raises serious doubt about his trustworthiness and reliability and particularly whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Brooks were permitted to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Brooks be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Brooks is required to notify the NRC of his first employment in NRC-licensed activities for the five year period after the above prohibition period. Furthermore, pursuant to 10 CFR 2.202, based on the significance of Mr. Brooks' conduct described above and the fact that he could seek and obtain employment and unescorted access at other nuclear facilities, and engage in licensed activities before his criminal history became known to the licensee, I find that the public health, safety and interest require that this Order be effective immediately.

#### IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50.5, and 10 CFR 150.20, *It is hereby ordered, effective immediately, that:*