

Before the
COPYRIGHT OFFICE,
LIBRARY OF CONGRESS
Washington, DC

Copyright Office Fees;)	COMMENTS OF THE
Notice of Proposed)	NATIONAL WRITERS UNION,
Rulemaking (FR Doc. 2018-)	SOCIETY OF CHILDREN'S BOOK
11095; Copyright Office)	WRITERS AND ILLUSTRATORS,
Docket Number 2018-4))	DRAMATIST'S GUILD OF AMERICA,
)	AND TEXTBOOK & ACADEMIC
)	AUTHORS ASSOCIATION

September 21, 2018

The undersigned national organizations of writers and creators submit these comments in response to the Notice of Proposed Rulemaking (NPRM) by the U.S. Copyright Office, “Copyright Office Fees,” FR Doc. 2018-11095, Copyright Office Docket Number 2018-4, 83 *Federal Register* 24054-24064 (May 24, 2018).

The National Writers Union (NWU) is a national labor union that advocates for freelance and contract writers. The NWU includes local chapters as well as at-large members nationwide and abroad. The NWU works to advance the economic conditions of writers in all genres, media, and formats. NWU membership includes, among others, fiction and nonfiction book authors, journalists, business and technical writers, website and e-mail newsletter content providers, bloggers, poets, novelists, playwrights, editors, and academic writers. The NWU is a national amalgamated union (Local 1981) of the United Auto Workers, AFL-CIO.

The Society of Children's Book Writers and Illustrators, a non-profit, 501(c)3 organization, is one of the largest existing organizations for writers and illustrators. It is the only professional organization specifically for those individuals writing and illustrating for children and young adults in the fields of children's literature, magazines, film, television, and multimedia. Our mission is to support the creation and availability of quality children's books around the world. We accomplish this by fostering a vibrant community of individuals who bring books for young readers to the public including writers, illustrators, translators, editors, publishers, agents, librarians, educators, booksellers, bloggers, enthusiasts and others. We provide education and support for these individuals and the community through our awards, grants, programs and events. We strive to increase the quality and quantity of children's books

in the marketplace, and act as a consolidated voice for writers and illustrators of children's books worldwide.

The Dramatists Guild of America (the "DG") is the professional trade association that promotes the interests of playwrights, composers, lyricists, and librettists writing for the stage. Established nearly one hundred years ago for the purpose of aiding dramatists in protecting both the artistic and economic integrity of their work, the DG continues to educate and advocate on behalf of its 7,500+ members. The DG believes a vibrant, vital theater is an essential element of this country's ongoing cultural debate, and seeks to protect those individuals who write for the theater to ensure its continued success.

The Textbook & Academic Authors Association ("TAA") is the only nonprofit membership association dedicated solely to assisting authors of scholarly books, textbooks, and journal articles. Formed in 1987, the TAA has over 2,000 members, primarily consisting of authors or aspiring authors of scholarly books, textbooks, and academic articles. Many of the TAA's members serve on college or university faculties. TAA's mission is to support textbook and academic authors in the creation of top-quality educational and scholarly works that stimulate the love of learning and foster the pursuit of knowledge. TAA's activities including: organizing writing workshops on campuses throughout the US; holding an Annual Authoring Conference; publishing a newsletter; running webinars; and maintaining a website and other resources to provide members with information on tax, copyright, and royalty matters. TAA also works to foster greater public appreciation of the importance of scholarly authors to education and to the advancement of knowledge.

Through this proceeding, the Copyright Office is proposing a new schedule of increased fees, including higher fees for registration of copyright in written works. The fee for a “standard” electronic application for registration of copyright would be increased from \$55 to \$75.

According to the NPRM, “the Office believes it is appropriate to return the fees for electronic filing to a level more commensurate with the Office’s costs, while not unduly disincentivizing the registration of copyrights.” But the NPRM provides no basis for the claim that the proposed fee increases (or the current fees) do not disincentivize copyright registration.

The burden of the current and proposed fees, and the disincentive to registration, is greatest for authors of multiple short-form works that aren’t published in formats that qualify for “group registration” with a single application form and for a single fee. For authors of works in these formats, the registration fees and the consequences of any increases in fees are multiplied.

For example, an author may work for months or years on the text of a long-form work which, if first published as a single book, can be registered for \$55 or possibly only \$35.

But if the same text is first published in a series of entries in the author’s blog, with at least one entry each day for a year, registering copyright in the same work will require a separate application form and fee for the work first published on each date. Currently, that would cost \$55 times 365 days, or \$20,075. The NPRM proposes to increase that to \$75 times 365, or \$27,375.

A writer who wants to register copyright in her Facebook and Twitter feeds and her personal website or blog would have to fill out more than a thousand registration forms a year. Under the current registration fee schedule, registering these copyrights would cost \$20,075 times three, or \$60,225 per year. The NPRM proposes to increase this to \$27,375 time three, or \$82,125 per year – far more than the annual income of all but the best-paid writers.

The current and proposed fees for registering multiple short-form works of flash fiction, poetry, or non-fiction published on the Web or in print or digital anthologies, collections, or formats that don't fit any of the current criteria for "group registration" are similarly prohibitive.

We suspect that ample evidence is available to the Copyright Office of the prohibitive burden of these registration requirements and fees. Tens of millions of websites are published in the US each year. How many of them are registered with the Copyright Office? We would be shocked to find that more than a tiny fraction of one percent of Web content is registered.

If a website is generating only hundreds or even thousands of dollars a year in revenue, there's no business case for spending twenty thousand dollars a year to register copyright. Only a handful of the most commercially successful websites generate sufficient revenues to be able to even consider copyright registration under the current, much less the proposed, fee schedule.

The burden of copyright registration forms and fees, and of the proposed increases in fees, is greatly exacerbated by the trends toward: (a) real-time publishing with shorter deadlines and more frequent or "continuous" updates with dynamic publishing (what once might have been a weekly or monthly print publication is now likely to be a website with at least daily updates), and (b) more granular publication of shorter and shorter works (what was once a single textbook or travel guidebook is now a compendium of hundreds or thousands of discrete "content elements" that can be aggregated and distributed individually or in multiple combinations).

There's one word for these registration fees: unconscionable.

According to the NPRM, "The Office has concluded that these proposed fees are 'fair and equitable, and give due consideration to the objectives of the copyright system.'"

However, this statement is entirely conclusionary. The NPRM provides no indication of the basis for this statement, and gives no evidence that the Copyright Office has even considered fairness, equity, or the objectives of the copyright system.

We do not believe that it is fair or equitable to charge hundreds of times more for registration of otherwise-similar amounts of writing if they are broken into smaller elements (each of which is a distinct “work” for copyright registration purposes) and published incrementally over time than if they are published in a single collection on a single date.

We also believe that “the objectives of the copyright system” and of regulations promulgated by the Copyright Office must include compliance by the U.S. with its obligations pursuant to international copyright treaties, which are not considered in the NPRM.

The Berne Convention on Copyright requires that the exercise by creators of exclusive rights “shall not be subject to any formality”. The NWU has long believed, and continues to believe, that requiring registration as a prerequisite to bringing a complaint of copyright infringement or recovering attorney’s fees is, *per se*, a violation of the Berne Convention.

Without the ability to recover attorney’s fees, the costs of litigation are prohibitive, as the Copyright Office itself has recognized in its study and report on small copyright claims. And a right is not meaningfully protected as an “exclusive” right if it can be infringed by others with impunity because the work was not timely registered and litigation would be too expensive.

The WIPO Copyright Treaty provides that, “Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty.” The combination of prohibitively high registration fees, prohibitively high costs of litigation, and the requirement for timely registration

as a prerequisite for recovery of attorney's fees together create a situation in which no effective action is available under U.S. law and legal procedures for most infringements of writers' copyrights, in flagrant violation of U.S. obligations pursuant to the WIPO Copyright Treaty.

To mitigate these violations of writers' rights and U.S. treaty obligations, the NWU and other organizations submitted a petition for rulemaking to the Copyright Office in January 2017 for the creation of new group registration procedures for multiple written works. A copy of the operative portion of that petition for rulemaking is attached to these comments.

We are disappointed that the Copyright Office has not acted on this petition.

Instead, the Copyright Office has taken a step in exactly the wrong direction by this NPRM proposing to increase registration fees while doing nothing to ease the burden on those writers' whose rights are most unfairly and excessively violated by the current fee schedule.

We renew and urge the Copyright Office to act promptly on our petition for rulemaking as originally made in Copyright Office Docket 2016-6 on January 30, 2017, and as attached.

We urge the Copyright Office to defer any action on this rulemaking to revise the fee schedule until the Copyright Office has completed action on our petition for rulemaking and has promulgated new rules creating group registration procedures for additional categories of works.

Respectfully submitted,

_____/s/____

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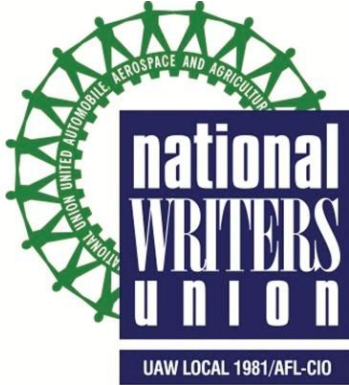
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Petition for Rulemaking on Group Registration
Submitted January 30, 2017
Copyright Office Docket Number 2016-8

We hereby petition the Register of Copyright to exercise her discretion, pursuant to Section 408(c)(1) of the Copyright Act, to initiate a rulemaking to create group registration procedures for:

(a) multiple written works first distributed in electronic format on multiple dates, regardless of whether they constitute contributions to "periodicals" or a "database" or might be determined to have been, as of the date of application for registration, "published" or "unpublished," and

(b) multiple written works by the same creator first published on multiple dates, regardless of whether they were published as contributions to periodicals.

Petitioners (original petitioners and subsequent endorsers):

National Writers Union (NWU)
American Society of Journalists and Authors (ASJA)
Science Fiction and Fantasy Writers of America (SFWA)
Horror Writers Association (HWA)
Textbook & Academic Authors Association (TAA)
Authors Guild
Association for Garden Communicators
Society of Children's Book Writers and Illustrators
Songwriters Guild of America
Western Writers of America (WWA)
Dramatists Guild of America