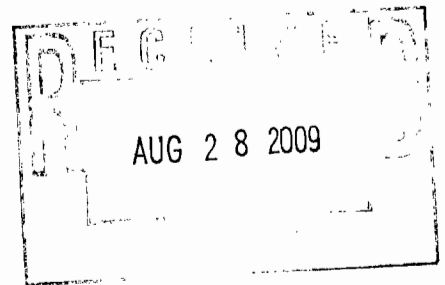


UNITED STATES COPYRIGHT OFFICE

Notice of Proposed Rulemaking on Electronic Registration for Deposit Account Holders



COMMENTS of MOTION PICTURE ASSOCIATION OF AMERICA

Fritz E. Attaway
Executive Vice President and Special Policy Advisor
Motion Picture Association of America, Inc.
1600 I Street, N.W.
Washington, D.C. 20006
Tel: 202 293-1966; Fax: 202 293-7674
Email: fattaway@mpaa.org

August 28, 2009

COMMENTS
of
MOTION PICTURE ASSOCIATION OF AMERICA

Motion Picture Association of America, Inc. (MPAA)¹ submits these comments in response to the Notice of Proposed Rulemaking ("Notice") published in the Federal Register on July 14, 2009, at page 33930.

The Copyright Office seeks comment on whether it should amend its rules to require that applications for registration paid for by deposit account debits be submitted electronically using the electronic Copyright Office registration system, known as eService. Comment is also requested on whether the Copyright Office should cease offering the use of deposit accounts altogether.

**Paper Applications Paid for by Deposit Account Debits
Should not be Disallowed, at Least for the Time Being**

MPAA member companies are extensive users of the Copyright Office's account debit system and its electronic registration system. Both systems are of great value to frequent registration applicants and the Copyright Office is to be commended for its foresight and initiative in providing these important services.

¹ MPAA members include Paramount Pictures Corporation, Sony Pictures Entertainment, Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment, Inc.

Electronic applications through eService are highly efficient and convenient for both applicants and the Copyright Office. It is certainly conceivable that one day eService will replace paper applications for all but a tiny fraction of registration applications. However, eService is relatively new and there continues to be some "bugs" in the system. For instance, MPAA member companies have experienced difficulties in allowing multiple users to access the system at the same time, and there is a need for the new system to have a meaningful review capability, which would include true search functionality.

While these problems are being addressed by the Copyright Office, it would be premature, at best, to prevent filers of multiple applications from using the deposit account system when they find it necessary to file paper applications. There are less draconian measures the Copyright Office can take to deal with the insufficient funds problem discussed in the Notice.

One way of dealing with the insufficient funds problem might be to require a one-time per-account, non-refundable set-up fee of, say \$100, for the establishment of a new deposit account or continuation of an existing account. If a registration or recordation filing is received which requires fees in excess of the balance in the deposit account, the submitted material would be returned and the account would be closed. The material could, of course, be later resubmitted with direct payment or with payment drawn from another deposit account, but the filing date would be the date of resubmission and not the date on which the rejected filing was first received. The depositing party would lose the reference date of submission, but because copyright vests upon fixation and not submission this would not be a violation of Berne obligations.

This procedure would resolve the concern of the Copyright Office about needing to track applications and to review them

multiple times. The set-up fee should more than cover the cost of returning the submission. Since the account would be closed, there should not be a situation in which the necessity of returning filings charged against a single account would repeatedly occur.

This is one possible solution. There well may be others. However, while we recognize the burden placed on the Copyright Office by users of the deposit account system who do not maintain adequate balances in their accounts, we do not believe that responsible users should be significantly disadvantaged due to the actions of irresponsible users. Those who find it necessary or appropriate to file paper applications, particularly when the eService system is still undergoing "fine tuning," should not be denied use of the deposit system so long as they use that system responsibly.

The Deposit Account System Should be Retained; There are no Effective Alternatives

As pointed out in the Notice, the deposit account system "has been more efficient and less expensive for both the Office and the applicant than sending separate payments to the Copyright Office for each application for registration."² MPAA members strongly agree with this statement, and submit that there are no effective alternatives to the deposit account system for multiple filers such as themselves.

While use of credit cards and corporate accounts may be appropriate for some filers, large corporate entities such as MPAA member companies must place effective controls on what can be charged to their accounts. Such controls, if improperly monitored, could result in the same insufficient funds problems the Copyright Office has encountered with the deposit account system. On the other hand, elimination of the deposit account system would eliminate a highly efficient and convenient resource that is relied upon by a large number of

² Notice at 33931.

multiple registration applicants. At least for the time being, the attention of the Copyright Office should remain on fixing the "bugs" in the electronic registration system, which MPAA members find extremely useful, and the deposit account system, which has worked efficiently and effectively for many years, should not be tampered with. Absent a compelling need to eliminate the deposit account system, and we know of none, the deposit system, which the Copyright Office acknowledges is both effective and inexpensive, should be continued.