



**BEFORE THE
U.S. COPYRIGHT OFFICE**

**Remitter Payment Options and Deposit
Account Requirements**

Docket No. 2022-1

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the [Notice of Proposed Rulemaking](#) (NPRM) published by the U.S. Copyright Office in the Federal Register on February 4, 2022, regarding remitter payments for Office services and requirements for maintaining a deposit account.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

The Copyright Alliance applauds the Office's efforts to modernize and consolidate regulations regarding payment options for Copyright Office services. As a general matter, as we have commented before in other contexts, it is important that the Office accept a variety of payment methods to accommodate the diversity of copyright owners engaging with the Office's systems, including those from low income, marginalized or underserved communities, and those otherwise

less likely to own a credit card¹ or have a bank account.² Therefore, the Office should accept not only credit and debit transactions, but it should also accept prepaid cards³ and other widely accepted online payment options, like PayPal, Zelle, Venmo, and CashApp. It is important to ensure that the effort to modernize the Office does not have the adverse and unintended consequence of creating roadblocks for those who may not have access to a credit card, such as low-income populations, minors and young adults.⁴

We appreciate the Office’s decision to continue allowing stakeholders to use deposit accounts, and the decision to eliminate the requirement for a minimum number of transactions per year. The deposit account system facilitates good recordkeeping by providing detailed monthly statements listing each transaction for each account, and is therefore vital to our members and other regular users of the system. Regarding the requirement to maintain a minimum balance in a deposit account, the proposed regulations would permit the Office to assess a service charge when an account falls below the minimum balance without first notifying the account holder that the account has fallen below the minimum balance. While an account holder could, in theory, determine that their account has fallen below the minimum balance by reviewing their monthly statement, this alone may not be enough of a notification (especially since those account holders whose accounts

¹ See FED. DEPOSIT INS. CORP., HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES 8 (2019) (“[In 2019], [l]ower-income households, less-educated households, Black households, Hispanic households, American Indian or Alaska Native households, and working-age disabled households were less likely to use bank credit [i.e., Visa, MasterCard, American Express, or Discover credit card, or a personal loan or line of credit from a bank]... in 2019, only 37.1 percent of households without a high school diploma used bank credit, compared with 87.5 percent of households with a college degree. Similarly, only 37.0 percent of households with less than \$15,000 in income used bank credit, compared with 89.9 percent of households with income of \$75,000 or more.”).

² See *id.* at 1-2 (“In 2019, 13.8% of Black households and 12.2% of Hispanic households were unbanked (compared to 2.5% of white households). Unbanked rates were also higher among “lower-income households, less-educated households, American Indian or Alaska Native households, working-age disabled households, and households with volatile income.”).

³ See *id.* at 32 (In 2019, “[p]repaid card use was higher among lower-income households, less-educated households, younger households, Black households, working-age disabled households, and households with volatile income. For example, 14.8 percent of Black households used prepaid cards in 2019, compared with 7.6 percent of White households.”).

⁴ In the final rule on “Copyright Alternative in Small-Claims Enforcement (“CASE”) Act Regulations: Expedited Registration and FOIA” promulgated by the Office, in response to this same point, the Office stated that “in the interest of providing future flexibility, the Office is revising this portion of the final rule to remove the references to specific payment methods and instead to simply state that a claimant or counterclaimant shall follow instructions on the Copyright Office website to make electronic payments by Pay.gov. Such an approach will enable the Office to consider possible additional methods of payment as Pay.gov expands its capabilities.” Copyright Alternative in Small-Claims Enforcement (“CASE”) Act Regulations: Expedited Registration and FOIA, 86 Fed. Reg. 46119, 46122 (proposed Aug. 18, 2021).

fall below the minimum balance are perhaps less likely to carefully review their statements on a regularly basis).⁵ We suggest that the Office:

- (1) clearly and conspicuously note on the monthly statement that the account has fallen below the minimum balance; and
- (2) separately notify the account holder so that they can add the necessary funds.

Failure to notify the account holder before moving forward with a service charge will only exacerbate a problem (by bringing the account even further below the minimum balance) that might otherwise be easily resolved.

We found certain aspects of the NPRM to be unclear and would welcome an opportunity to discuss the proposal further so that we may provide better input. For example, it is unclear based on the language of the NPRM whether *pay.gov* permits automatic replenishment. In one instance, the Office explains that *pay.gov* permits automatic payments via ACH but not via credit card.⁶ In another, the Office says “[a]t this time, Pay.gov lacks the ability to provide such automatic replenishment.”⁷ If automatic replenishment is currently an option via *pay.gov* for ACH transfers (as we believe it to be), rather than assessing a \$25 service charge if an account falls below the minimum balance, the regulations should permit automatic replenishment of those deposit accounts (if the accounts are not manually replenished before the last day of the calendar month when the Office proposes that the service charge would assessed).

If automatic replenishment is not an option via *pay.gov*, the Office (and other affected agencies) should make Congress aware of this problem, explain how this hinders the Office’s efforts to fully modernize, and request that Congress officially request the Treasury Department to update the *pay.gov* system or alternatively to provide authority and, if necessary, additional funding for the Office to accept payments via a more advanced platform. The inability of *pay.gov* to accept automatic replenishment renders the system totally outdated and negatively affects the Office’s modernization efforts and ability to appropriately meet the needs of 21st century users of the copyright system. It is concerning that the Office would have to sacrifice the sound policy

⁵ For example, if the monthly statement does not clearly explain the nature of all charges and deductions, including service charges, an account holder may not realize that the account has fallen below the minimum balance. Therefore, we suggest that monthly statements clearly denote the nature of all charges and deductions so that an account holder can easily ascertain information about service charges (and, for example, the names of the works registered for which monies were debited).

⁶ Remitter Payment Options and Deposit Account Requirements, 87 Fed. Reg. 6452, 6454 (proposed Feb. 4, 2022).

⁷ *Id.* at 6455.

articulated in the current regulations⁸—i.e., the ability for automatic replenishment—due to poor and unsuited technology. Until this matter is addressed, we suggest that the regulations be drafted in such a way that would permit automatic replenishment if and when *pay.gov* expands its capabilities.⁹ If automatic replenishment becomes an option via *both* ACH transfers and credit card payments, the regulations should *require* automatic replenishment of those deposit accounts when an account falls below the minimum balance. This would eliminate the costs to the Office associated with monitoring deposit accounts, thereby also eliminating the need to assess a service charge. It would also save users of the system money.

Alternatively, it may be that the problem is not a technological one but rather one of U.S. Government policy that the Office is required to abide by. We understand that it may be the policy of the Treasury department to allow for the use of cards only for payments and not for replenishments.¹⁰ If that is the case, then we think that the Office should make Congress aware of this problem, explain how this hinders the Office’s efforts to fully modernize, and request that Congress officially query the Treasury department on the justification of this policy.¹¹

We appreciate the opportunity to submit these comments, and for the Copyright Office’s attention to this issue. We would welcome the opportunity to discuss these matters more thoroughly and provide additional input or answer any further questions.

Respectfully submitted,

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⁸ “[T]he current deposit account regulations allow for automatic replenishment of funds...” *Id.* at 6454.

⁹ See *supra* note 4.

¹⁰ *Fees & payment FAQs*, United States Patent and Trademark Office, https://www.uspto.gov/learning-and-resources/fees-and-payment/fees-payments-faqs#type-browse-faqs_162583 (last visited Mar. 7, 2022) (“Due to the Department of the Treasury rules, cards are only available for fee payments. Replenishments are not considered fee payments as there has not been an exchange of goods or services.”).

¹¹ For larger businesses, automatic replenishment is generally preferred, but ACH transactions (which pull money directly from a corporate bank account) typically require a lengthier and more complicated internal approval process than the use of corporate credit cards.