LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 2001–1 CARP DSTRA2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002 through December 31, 2007.

DATES: *Effective Date:* August 4, 2003.

Applicability Date: The regulations apply to the license period January 1, 2002 through December 31, 2007.

FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services to make digital transmissions of a sound recording under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by preexisting services, the Copyright Office published a notice in the **Federal Register** on January 9, 2001. 66 FR 1700 (January 9, 2001). This notice initiated a six-month negotiation period the purpose of which was to provide an opportunity for interested parties to set rates and terms for use of the section 114 license as it applied to both the preexisting subscription services and the preexisting satellite digital audio radio services. Unfortunately, no agreement was reached by the end of that period and petitions were filed requesting that the Librarian of Congress convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the rates and terms for both categories of preexisting services.

On January 17, 2003, the Copyright Office received notification of a settlement among the parties contesting rates and terms for preexisting services and a joint petition requesting the Librarian to publish their proposed rates and terms in accordance with § 251.63(b) of the CARP rules, 37 CFR, which provides that—

> [i]n the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.
>
> 37 CFR 251.63(b).

On January 30, 2003, the Copyright Office published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** announcing the settlement and proposing the rates and terms for preexisting services. 68 FR 4744 (January 30, 2003). The NPRM specified that—

[a]ny party who objects to the proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so. The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge.

68 FR at 4745. Objections to the proposed rates and terms were due by March 3, 2003. On March 3, the Office received an objection from Royalty Logic, Inc. (''RLI'').

Resolution of the Objection to the NPRM

1. RLI's Objection

RLI's March 3, 2003, objection and Notice of Intent to Participate represents RLI's second attempt to enter this proceeding. On January 17, 2003, on the same day that the Copyright Office received notification of the settlement of rates and terms for preexisting services and 14 months after the Office called for Notices of Intent to Participate in this proceeding, RLI filed a motion to accept a late-filed Notice of Intent to Participate. In an Order issued March 14, 2003, the Office denied RLI's motion. The Office applied its two-part test for considering late-filed Notices of Intent to Participate—the disruption to the proceeding by accepting the Notice and whether good cause is shown for it being late—and determined that RLI failed both prongs of the test. Order in Docket No. 2001–1 CARP DSTRA2 (March 14, 2003). We now consider whether there are sufficient grounds to accept RLI's March 3 objection and its new Notice of Intent to Participate.

As discussed above, the NPRM required parties filing an objection to state their interest in the proceeding and the reasons for their challenge. In its March 3 filing, RLI asserts that it is a for-profit corporation that administers music licensing royalties on behalf of hundreds of radio and television stations and that one of its key business objectives ''is to provide these same types of agency services to recording labels and performing artists with respect to the administration and distribution of royalty payments to be made to them pursuant to the statutory licenses under sections 112(e) and 114 of the Copyright Act.'' RLI Objection at 2. In order to enter this business, RLI states that it is necessary for it to be recognized in the rules proposed in the NPRM as a Designated Agent to receive royalties from preexisting services, which it currently is not. RLI notes that it is a recognized Designated Agent for another statutory license in section 114 of the Copyright Act for nonsubscription transmission services, see 37 CFR 260.3(a), but its ''efforts to enroll clients have been substantially impeded by its inability to assure clients of RLI's ability to administer all license payments to which these clients would be entitled.'' *Id.* at 3. Consequently, RLI objects to the NPRM so that further proceedings may be held to include it as a Designated Agent in the Copyright Office rules for distribution of royalties collected from preexisting subscription services.

Having offered the reason for its objection, RLI asserts that it has an interest in this proceeding because it is an entity that distributes royalties, is already a Designated Agent for royalties collected from nonsubscription transmission services, and ''has a stake'' in this proceeding. *Id.* at 5. RLI also offers that having multiple Designated Agents identified in the regulations is beneficial and desirable for copyright owners and performers and will offer them an alternative to SoundExchange, the only Designated Agent in the NPRM. *Id.* at 7–9.

On March 26, 2003, RLI filed a supplement to its March 3, 2003, objection to the NPRM. RLI stated that—

[t]he reason for this Supplement is to inform the Copyright Office that RLI has signed affiliate agreements with copyright owners and performers who wish RLI to serve as their Designated Agent for all Section 112 and 114 statutory licenses, and therefore object to the proposed settlement insofar as it would fail to designate RLI for the collection and distribution of statutory license royalties for the pre-existing subscription services.

RLI Supplement at 1. RLI went on to state that it had ''signed affiliation agreements, effective January 1, 2003, with numerous copyright owners and performers,'' although it declined to identify any of these owners and performers by name. *Id.* at 2. RLI concluded that if the NPRM were adopted, the copyright owners and performers that it now represents would be denied from collecting their preexisting subscription service royalties through RLI and would be forced to deal solely with SoundExchange, the only Designated Agent in the NPRM.

The Recording Industry Association of America, Inc., and, jointly, the American Federation of Musicians of the United States and Canada and the American Federation of Television and Radio Artists opposed RLI's March 26 supplement.

2. RLI's Interest in This Proceeding

The consequences of an objection to a proposal of rates published under § 251.63(b) of the CARP rules are considerable; the Librarian will not adopt the proposed rates and terms and will schedule a CARP proceeding to resolve the matter. However, because a challenge is lodged does not necessarily mean that a CARP must be convened. The Librarian must evaluate the sufficiency of the objection to determine whether the objecting party (1) has a significant interest in the establishment of the rates and terms and (2) has asserted objections to the proposed rates and terms that can be resolved in a CARP proceeding.

The first requirement, that an objecting party have a significant interest in the rates and terms to be established, is derived from the language of the Copyright Act. Section 803(a)(1) of the Act provides that rate proceedings for certain statutory licenses in the Act-particularly sections 112 and 114 which are at issue in this proceeding-begin with the submission of a petition to the Librarian of Congress. In other words, one or more parties may request the Librarian to invoke the CARP process to establish rates and terms by filing a petition or petitions. For each petition received, the statute requires that the ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested.'' 17 U.S.C. 803(a)(1). Although there is no legislative history as to what constitutes a ''significant interest,'' the requirement of such makes a great deal of sense. Rate proceedings before a CARP are lengthy, complex, and expensive. It would make no sense to allow an entity with a tentative or collateral interest in the rates to invoke a CARP proceeding; in order to initiate the proceeding, a party should at a minimum have a significant interest in the rates and terms to be established.

While section 803(a)(1) addresses petitions to initiate rate proceedings, there is no similar provision in the Copyright Act related to challenges of proposed rates and terms that are the result of settlement reached by participants in a CARP proceeding. The Copyright Office developed § 251.63(b) of the CARP rules to address circumstances where, due to a settlement, a CARP is no longer necessary. Although § 251.63(b) is a rule and not a statutory provision, it has the specific endorsement of the Congress.

If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless

expense of an arbitration proceeding conducted under (section 114(f)(2) (1995)). Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995) (citations omitted) (emphasis added). Plainly, for the same reasons that the Librarian must determine whether a petitioner for a rate proceeding has a significant interest in the rates and terms, Congress recognized that a party challenging proposed rates and terms that are the product of a settlement must likewise have a significant, or substantial, interest. Consequently, when the Office published the NPRM in this proceeding, it required any party filing objections to identify its specific interest in the rates and terms to be adjusted to enable the Librarian to determine whether it has a significant (substantial) interest. See 68 FR at 4745 (''[U]nless there is an objection from a person with a significant interest in the proceeding who is prepared and eligible to participate in a CARP proceeding, * * * the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP'').

The question then remains: what is a significant or substantial interest in a rate proceeding? The inquiry is a factual one and determinations must be made on a case-by-case basis. Clearly, a copyright owner whose works are being used under a statutory license has a significant interest in a rate setting or adjustment of that license, as does the person or entity using those works under the statutory license. Order in Docket No. 99–6 CARP DTRA (June 21, 2000). An entity that collects the royalties generated under a statutory license on behalf of certain copyright owners whose works are used can have a specific interest in a rate proceeding, but only to the extent that such entity is fully authorized by, and acts on the behalf of, those copyright owners to represent their interests in the rate proceeding. It is through the authorization of these copyright owners, however, and not because of its business or personal interest, that a royalty collection entity gains a specific interest in a rate proceeding.

Likewise, an entity that represents users of copyrighted works can have a specific interest in a rate proceeding, but only gains that specific interest from the authorization of the users it represents. A person or entity that is not a user of a statutory license but expresses a vague or unspecified desire to form a business that would make use of the license or that would benefit indirectly from another's use does not have a specific interest. Order in Docket No. 99–6 CARP DTRA at 2 (June 21, 2000) (''Glaser's interest in what the fees will be is general in that it may affect the profitability of his other businesses, but it is not specific to his person or to his role as a representative of these other businesses.''). And a person or entity that proposes or objects to a rate proceeding solely on the basis of espoused public policy or consumer interest concerns does not have a specific interest.

The NPRM in this proceeding specified that parties objecting to the proposed rates and terms identify their interest in the proceeding no later than March 3, 2003. Review of RLI's March 3, 2003, filing reveals that RLI did not represent any copyright owners entitled to collect royalties from preexisting subscription services under the section 112 and 114 licenses. Rather, it states that its ''key business objective'' is to distribute such royalties in the future and that its participation in this proceeding is necessary to attaining that objective. RLI Objection at 2. This is confirmed in the March 26, 2003, ''supplement'' to its objection where RLI states that it is ''pleased to inform the Copyright Office'' that it had entered into affiliation agreements with unspecified copyright owners and performers whose works it purports are used under the section 112 and 114 licenses. RLI Supplement at 2.[1] Since RLI did not represent copyright owners entitled to royalties from preexisting subscription services under the section 112 and 114 licenses at the time that it filed its objection, and did not have authorization from any copyright owners eligible to receive such royalties to lodge the objection and participate in a CARP proceeding on their behalf, RLI does not have a specific interest in this rate adjustment proceeding.

Moreover, even if the information in RLI's March 26 ''supplement'' were accurate as of March 3, RLI does not even purport to assert that any copyright owners have authorized RLI to represent them in a CARP proceeding or even to object to the proposed rates and terms on their behalf. RLI states its belief that ''[b]y affiliating with RLI and electing to receive their royalties from an agent other than SoundExchange, RLI's client performers and copyright owners are expressing their opposition, through RLI, to the proposed settlement.'' Supplement at 3 (emphasis added). But it is hardly self-evident that the act of affiliating with RLI and electing to use RLI as their agent to receive royalties constituted an authorization by those unidentified copyright owners for RLI to express opposition on their behalf to the proposed rates and terms or to participate in a CARP on their behalf. Indeed, RLI has failed even to identify a single copyright owner whom it represents in asserting its objection to the proposed rates and terms. If RLI wishes to participate in a CARP as a representative of copyright owners, it must identify the copyright owners whom it represents.

RLI also argues that copyright owners and performers should be given a ''competitive choice among agents for the distribution of sound recording performance royalties,'' Objection at 7, and that in amending 17 U.S.C. 114(g) in the Small Webcaster Settlement Act of 2002, Pub. L. 107–321, Congress (1) ''acknowledged and contemplated that more than one entity could serve as a Designated Agent in competition with SoundExchange,'' and (2) provided that ''performers and copyright owners have the absolute right to choose a Designated Agent other than SoundExchange so as to avoid the recoupment of historical litigation and other costs.'' *Id.* at 8 (footnote omitted).

These arguments do not compel the conclusion that RLI has standing to block a settlement and force the determination of rates and terms to be made by a CARP. The fact that more than one entity could serve as Designated Agents does not mean that there necessarily ought to be more than one Designated Agent,[2] or that an aspiring candidate for designation has sufficient interest to participate in its own right in a CARP proceeding. The fact that Congress has recognized that

[1] RLI also faxed replies on April 11 and April 24, 2003, to the objections lodged against its March 26 Supplement. Permission was not sought to submit these replies and they are therefore not considered. Moreover, unless otherwise directed by the Librarian, the rules do not provide for the submission of any pleading by facsimile transmission. 37 CFR 251.44(a).

[2] Indeed, we have expressed skepticism about the benefit of the two-tier structure involving a Receiving Agent and more than one Designated Agent, which adds expense and administrative burdens to a process the purpose of which is to make prompt, efficient, and fair payments of royalties to copyright owners and performers with a minimum of expense. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule, 67 FR 45239, 45267 n.46 (July 8, 2003).

there have been and may continue to be more than one Designated Agent also does not mean that this is a necessary or even a desirable outcome. On the other hand, it could be that when Congress, in the Small Webcaster Settlement Act, amended the law to permit SoundExchange to deduct costs incurred in licensing rights under section 114 or to deduct costs incurred as a participant in a CARP proceeding from the royalties that it distributes to copyright owners and performers,[3] it also included the provision denying SoundExchange that right with respect to ''copyright owners and performers who have elected to receive royalties from another designated agent,'' 17 U.S.C. 114(g)(3), in order to give copyright owners and performers a means to avoid being subject to recoupment of SoundExchange's litigation and other costs. Such a provision may have been intended to deter SoundExchange from making excessive deductions, in light of the fact that copyright owners and performers could elect to receive their royalties from an alternative Designated Agent if they were dissatisfied with the extent of SoundExchange's deductions. But even if that is so, it would not give RLI standing to participate on its own behalf in a CARP in order to seek designation as an agent. Instead, it would give a copyright owner or performer entitled to participate in the CARP the power to seek the designation of RLI or some other entity as an alternative Designated Agent.[4]

[3] SoundExchange had sought the power to make such deductions in the previous CARP proceeding setting rates and terms for eligible nonsubscription services, but the Librarian, on the recommendation of the Register, rejected the CARP's terms that would have permitted such deductions. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule, 67 FR 45239, 45269 (July 8, 2003)(noting that ''[s]uch activity is beyond the scope of collection and distribution of royalties.'').

[4] In fact, it is not clear that RLI needs to participate in a CARP proceeding or be named in a negotiated settlement in order to act as a designated agent for purposes of collecting royalty fees on behalf of copyright owners and performers who are entitled to receive funds collected pursuant to the section 112 and section 114 licenses. Section 112(e)(2) and section 114(e) of the Copyright Act both expressly provide that a copyright owner of a sound recording may designate common agents to negotiate, agree to, pay, or receive royalty payments. Under these provisions, it is plausible that a copyright owner or performer could designate any agent of his or her choosing (including RLI)—whether or not that agent had been formally designated in the CARP proceeding-to receive royalties from the licensing of digital transmissions and, by doing so, limit the costs of such agents to those specified in section 114(g)(4), as amended by the Small Webcaster Settlement Act of 2002.

3. Determination

For the reasons stated above, the Librarian of Congress determines that RLI does not have a specific interest in the rates and terms proposed in this NPRM and consequently does not have standing to require the convocation of a CARP. RLI's objection is therefore dismissed. Since there were no other objections filed, the Librarian is adopting the proposed rates and terms announced in the NPRM as final.

The following rates and terms for the use of sound recordings by preexisting subscription services under the section 112(e) and section 114 licenses of the Copyright Act shall be effective for the period January 1, 2002 through December 31, 2007.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings.

Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 260 of 37 CFR as follows:

PART 260–RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND MAKING OF EPHEMERAL PHONORECORDS

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1)

■ 2. The heading of Part 260 is revised to read as set forth above.

■ 3. Section 260.1 is revised to read as follows:

§ 260.1 General

(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

■ 4. Section 260.2 is amended as follows:
■ a. By revising the section heading;
■ b. By revising paragraphs (a) and (b);
■ c. By redesignating paragraph (c) as paragraph (e), and adding a new paragraph (c);
■ d. By adding a new paragraph (d);
■ e. In redesignated paragraph (e)(1)(ii) by adding ''a'' before ''recognized advertising agency';
■ f. In redesignated paragraphs (e)(1)(iii) and (vi), by removing ''Programming Service'' and adding ''programming service'' in its place;
■ g. In redesignated paragraphs (e)(1)(viii) and (e)(2), by removing ''(c)'' and adding ''(e)'' in its place; and
■ h. By adding a new paragraph (f).

The additions and revisions to § 260.2 read as follows:

§ 260.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on August 20, 2003. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable

against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

* * * * *

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

■ 5. Section 260.3 is amended as follows:

■ a. In paragraph (b), by removing ''twentieth'' and adding ''forty-fifth'' in its place;

■ b. By revising paragraphs (c), (d) and (e); and

■ c. By adding a new paragraph (f).

The additions and revisions to § 260.3 read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct from any of its receipts paid by Licensees under § 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1) & (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.

(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.

(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and July 31, 2003, to the Designated Agent, less any amounts previously paid by such period to the Recording Industry Association of America, Inc., or SoundExchange by September 15, 2003.

■ 6. Section 260.4 is amended as follows:

■ a. In paragraphs (a) and (b), by removing ''nonexempt subscription digital transmission service'' in each place it appears and adding ''nonexempt preexisting subscription service'' in its place; and

■ b. By revising paragraphs (d)(1) and (e).

The revisions to § 260.4 read as follows:

§ 260.4 Confidential information and statements of account.

* * * * *

(d)(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

* * * * *

(e) The designated agent or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.

* * * * *

§ 260.5 [Amended]

■ 7. Section 260.5(b) is amended by removing ''nonexempt subscription digital transmission service'' and adding ''nonexempt preexisting subscription service'' in its place.

■ 8. Section 260.6 (revised at 68 FR 36470, June 18, 2003, to become effective July 18, 2003) is amended as follows:

■ a. By revising paragraphs (a), (b) and (c);

■ b. In paragraph (f), by removing ''designated agent'' and adding ''entity which made the underpayment'' in its place; and

■ c. In paragraph (g), by removing ''individuals or entities''.

The revisions to § 260.6 read as follows:

§ 260.6 Confidential information and statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

* * * * *

§ 260.7 [Amended]

■ 9. Section 260.7 (amended at 68 FR 36470, June 18, 2003, to become effective July 18, 2003) is amended as follows:

(a) By adding ''collecting'' before ''agent'' the first time it appears;

(b) By removing ''designated'' the second and third time it appears and adding ''collecting'' in its place; and

(c) By removing ''the cost of the administration of the collection and distribution of the royalty fees'' and adding ''any costs deductible under 17 U.S.C. 114(g)(3)'' in its place.

Dated: June 16, 2003.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 03–16727 Filed 7–2–03; 8:45 am]

BILLING CODE 1410–33–P