



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

NOTICE VACATING PRECONTROVERSY DISCOVERY SCHEDULE AND NOTICE OF MEETING.

DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING

The following excerpt is taken from Volume 62, Number 22 of the *Federal Register* for Monday, February 3, 1997 (pp. 5057-5058)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice vacating precontroversy discovery schedule and notice of meeting.

SUMMARY: The Library of Congress is vacating the current precontroversy discovery schedule and the date for initiating the proceeding to determine reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery to allow further negotiations. On April 1, 1997, the parties will meet with members of the Copyright Office and report on the status of these negotiations.

DATE: The schedule for the digital phonorecord delivery rate adjustment proceeding is vacated as of February 3, 1997. On April 1, 1997, at 10:00 a.m., the Copyright Office will conduct a status meeting with all interested parties.

ADDRESSES: The meeting will be held at the Library of Congress, James Madison Building.

FOR FURTHER INFORMATION

CONTACT: William Roberts, Senior Attorney for Compulsory Licenses, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707 8380.

SUPPLEMENTARY INFORMATION:

The Digital Performance Right in Sound Recordings Act of 1995 ("Digital Performance Act"), Public Law No. 104-39, 109 Stat. 336., confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes digital transmissions which constitute "digital phonorecord deliveries." 17 U.S.C. 115(c)(3). A "digital phonorecord delivery" is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. 17 U.S.C. 115(d), 37 C.F.R. 255.4.

The rate for all digital phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, is the same as the current rate for the making and distribution of physical phonorecords: 6.95 cents for each work embodied in a phonorecord, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger. 37 C.F.R. 255.5.

The current rate for digital phonorecord deliveries expires on December 31, 1997. Accordingly, in the Digital Performance Act, Congress established a two-step process for adjusting the royalty rate, a negotiation

period wherein the owners and the users attempt to reach their own voluntary licenses, and then if necessary, and upon the filing of a petition in 1997, the convening of a copyright arbitration royalty panel (CARP) to establish rates and terms for those persons who are not covered by such voluntary licenses. 17 U.S.C. 115(c)(3)(C) and (D).

On July 17, 1996, the Copyright Office published a notice initiating a period for the users and owners to negotiate reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery. 61 FR 37213 (July 17, 1996). In that notice, the Office acknowledged that the Digital Performance Act specified neither a date for initiating the negotiation period, nor a date for concluding the negotiations and instituting an arbitration proceeding. Nevertheless, the expiration of the current rates on December 31, 1997, prompted the Office to create a schedule which would have new effective rates in place by January 1, 1998. *Id.*

The parties with an interest in negotiating the rates and terms for the digital phonorecord delivery license established in the Digital Performance Act, however, believed that the Office's proposed schedule did not provide sufficient time for negotiating a voluntary set of rates and terms. Therefore, on November 8, 1996, the Recording Industry Association of America, the National Music Publishers' Association, Inc., and the Harry Fox Agency, Inc. (collectively, "the Parties") filed a joint motion with the Library to vacate the scheduled dates appearing in the July 17, 1996, *Federal Register* notice. The Parties informed the Office that

The Parties informed the Office that adherence to the proposed schedule would prematurely terminate their efforts to reach a voluntary license. The Office announced a new schedule for this proceeding, 61 FR 65243 (December 11, 1996), which moved the date for the filing of direct cases from January 31, 1997, to April 1, 1997.

In response to the new schedule, the parties requested a meeting with the Register of Copyrights to discuss the problems associated with negotiating rates and terms for the digital phonorecord delivery compulsory license within the proposed time frame. The Copyright Office met with representatives of the Recording Industry of America, the National Music Publishers' Association, and the Harry Fox Agency, Inc. on January 9, 1997. At this meeting, the Parties outlined the difficulties in determining rates and terms for use of a new technology in a marketplace with little definition or clear direction. The Parties indicated that they fully expected to reach a voluntary agreement through negotiations over the next few months; however, they believe it is not possible to conclude negotiations before April 1, nor to prepare adequate direct cases for presentation to an arbitration panel by this date in the event the Office chose to proceed with its schedule. At the conclusion of the meeting, the Parties asked the Office to reconsider their original motion to vacate the schedule and to refrain from setting a new schedule while the Parties continue their negotiations.

Upon further consideration, the Office is granting the Parties' request to vacate the announced schedule for this proceeding, thereby removing any impediment for constructive negotiations between the users and the owners. The setting of the rates and terms for the delivery of digital phonorecords is not an open ended process; therefore, the Office will continue to monitor the progress of the negotiations through periodic status meetings, the first of which is scheduled for April 1, 1997.

Marybeth Peters,
Register of Copyrights.

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