



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

NOTICE WITH REQUEST FOR COMMENTS.

ASCERTAINMENT OF CONTROVERSY FOR THE DISTRIBUTION OF THE 1995, 1996, 1997, AND 1998 DIGITAL AUDIO RECORDING ROYALTY FUNDS

The following excerpt is taken from Volume 64, Number 85 of the
Federal Register for Tuesday, May 4, 1999 (pp. 23875-23876)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98-3 CARP DD 95-98]

Ascertainment of Controversy for the Distribution of the 1995, 1996, 1997, and 1998 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of
Congress

ACTION: Notice with request for
comments.

SUMMARY: The Copyright Office of the
Library of Congress directs all claimants to
the royalty fees collected in 1995, 1996,
1997, and 1998 for the distribution of digital
audio recording devices and media to submit
comments as to whether a controversy exists
as to the distribution of the royalty fees in the
1995, 1996, 1997, and 1998 Musical Works
Funds.

DATES: Comments and notices of intent to
participate are due by July 6, 1999.

ADDRESSES: If sent BY MAIL, an
original and 5 copies of written comments
should be addressed to Office of the General
Counsel, Copyright Arbitration Royalty Panel
(CARP), P.O. Box 70977, Southwest Station,
Washington, DC 20024. If DELIVERED BY
HAND, an original and 5 copies should be
brought to: Office of the General Counsel,
Copyright Office, Room LM-403, James
Madison Memorial Building, 101
Independence Avenue, SE, Washington, DC
20559-6000.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General
Counsel, or Tanya M. Sandros, Attorney
Advisor, Copyright Arbitration Royalty Panel
("CARP"). Telephone: (202) 707-8380.
Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

I. Background

The Audio Home Recording Act of 1992
(the "Act"), Pub. L. 102-563, requires
manufacturers and importers to pay royalties
on digital audio recording devices and media
that are distributed in the United States. 17
U.S.C. 1003. The royalties are deposited with
the Copyright Office for further distribution
to interested copyright parties who file claims
with the Copyright Office each year during
January and February. 17 U.S.C. 1005, 1007.

The Act provides that the royalties are
divided between two funds: the Sound
Recordings Fund and the Musical Works
Fund. The Sound Recordings Fund receives
66 2/3% of the royalties and the Musical
Works Fund receives the remaining 33 1/3%.
These fees are allocated further to specific
subfunds.

The Sound Recordings Fund consists of
four subfunds: the Featured Recording Artists
Subfund, the Copyright Owners Subfund, the
Nonfeatured Musicians Subfund, and the
Nonfeatured Vocalists Subfund. The two
subfunds created for the benefit of
nonfeatured artists receive a total of 4% of
the funds allocated to the Sound Recordings
Fund. Of the remaining royalty fees in the
Sound Recordings Fund, 60% is allocated to
the Copyright Owners Subfund and 40% is
allocated to the Featured Recording Artists
Subfund. Similarly, the royalty fees allocated
to the Musical Works Fund are equally
divided between two subfunds, the Publishers
Subfund and the Writers Subfund. 17 U.S.C.
1006(b).

Distribution of these fees may occur in
one of two ways. If the claimants within each
subfund agree among themselves how to
distribute the royalty fees, the Librarian of
Congress distributes the royalties to the
claimants in accordance with their negotiated
agreement.¹ 17 U.S.C. 1007(b). Alternatively,

if the parties cannot reach an agreement, the
Librarian of Congress must convene a
copyright arbitration royalty panel ("CARP")
to determine the distribution of royalty
payments.² 17 U.S.C. 1007(c). Before
commencing a distribution proceeding,
however, the Copyright Office must first
ascertain whether a controversy exists
concerning the distribution of the royalty fees
among the copyright claimants to the funds
available for distribution. 17 U.S.C. 803(d)
and 1007(b).

II. Ascertainment of Controversy and Notices of Intent to Participate

Section 251.45(a) of the Copyright Office
regulations, title 37 of the Code of Federal
Regulations, requires that:

[T]he Librarian of Congress shall, after
the time period for filing claims, publish in
the *Federal Register* a notice requesting each
claimant on the claimant list to negotiate with
each other a settlement of their differences,
and to comment by a date certain as to the
existence of controversies with respect to the
royalty funds described in the notice. Such
notice shall also establish a date certain by
which parties wishing to participate in the
proceeding must file with the Librarian a
notice of intention to participate.

¹ The claimants to the royalty fees in the Sound
Recordings Funds have negotiated a universal settlement
agreement among themselves for each year as to the
proportionate share that each claimant receives from the
subfunds. These agreements have made it unnecessary for
the Librarian to convene a CARP and have allowed him
to distribute all royalty fees allocated to the Sound
Recordings Funds during 1993 to 1998.

² In 1996, the Librarian convened a CARP to determine
the distribution of the 1992, 1993, and 1994 Musical
Works Funds. See 62 FR 6558 (February 12, 1997). The
Librarian's final order determining the distribution of
these funds based upon the CARP's findings was
appealed to and recently upheld by the United States
Court of Appeals for the District of Columbia Circuit.

The purpose of the negotiation requirement is to make all of the claimants within each fund/subfund aware of each other and to encourage active participation and open discussion on how to resolve each party's claim. The Copyright Office has compiled a list of claimants who have filed timely a claim to either of the two subfunds comprising each of the 1995, 1996, 1997, and 1998 Musical Works Funds.³ Claimants must use these lists in negotiating settlement agreements concerning the distribution of the royalty fees.

At the conclusion of the negotiation period, the claimants must submit to the Copyright Office comments identifying the existence of any settlement agreements and the existence of any remaining controversies. Participants must identify each subfund in the Musical Works Funds by year and indicate whether any controversy remains over the distribution of the royalty fees in that subfund or whether an agreement has been reached. In the case of an agreement, the notice must list the name of all claimants covered by the agreement. Participants must advise the Copyright Office of any controversy by the end of the comment period. The Office will not consider controversies which are brought to its attention after the close of the comment period.

Each claimant who intends to participate in the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds must also file a notice of intent to participate. The notice must identify each year and each subfund in which the copyright owner has an

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interest. Failure to file a timely Notice of Intent may preclude a party from participating in the distribution proceeding. The notices are due July 6, 1999.

III. Consolidation of Proceedings

Section 801(d) of the Copyright Act, 17 U.S.C., as amended by the Technical Amendments to the Satellite Home Viewer Act of 1994, Pub. L. 105-80, states that "[t]he Librarian of Congress, upon the recommendation of the Register of Copyrights, . . . shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. . . . Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1)."³ Funds to pay the arbitrators come from the royalty funds under consideration in the distribution proceeding. Because there are

insufficient funds available from the Musical Works Fund for any single year to cover the projected cost of an arbitration proceeding that would require oral testimony, the Copyright Office is consolidating the consideration of the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds into a single proceeding in order to have sufficient funds to meet its financial obligations to the arbitrators.

Dated: April 28, 1999.
Marybeth Peters,
Register of Copyrights.

[FR Doc. 99-11182 Filed 5-3-99; 8:45 am]

BILLING CODE 1410-33-P

³ Copies of the claimant lists are available for viewing and copying between the hours of 8:30 a.m. and 5:00 p.m. at the: Library of Congress, Copyright Office, Licensing Division, Room LM-458, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20557-6400.