



ANNOUNCEMENT

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

FINAL REGULATIONS.

PAYMENT OF ARBITRATORS; DISTRIBUTION PROCEEDINGS

The following excerpt is taken from Volume 64, Number 90 of the
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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. RM 99-1 CARP]

Payment of Arbitrators; Distribution Proceedings

AGENCY: Copyright Office, Library of Congress

ACTION: Final regulations.

SUMMARY: The Copyright Office is announcing final regulations that prescribe how the arbitrators who serve on a copyright arbitration royalty panel shall be reimbursed for their services.

DATES: Effective June 10, 1999.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: Copyright arbitration royalty panels (CARPs) are *ad hoc* panels administered by the Librarian of Congress and the Copyright Office. The CARPs adjust the rates and distribute the royalty fees collected under the various compulsory licenses and statutory obligations of the Copyright Act.

Three arbitrators serve on each panel. Upon the recommendation of the Register of Copyrights, the Librarian of Congress selects two of the arbitrators, who in turn choose a third person to serve as the chairperson. Prior to the passage in 1997 of the Technical Corrections to the Satellite Home Viewer Act of 1994, Public Law 105-80, 111 Stat. 1529, the Librarian of Congress had no express

authority to pay the arbitrators for their services, even in those instances when the Library held the royalty fees that were the subject of a distribution proceeding. Consequently, the responsibility for paying the arbitrators fell to the parties participating in the proceeding.

This changed with the passage of the technical amendments act which, *inter alia*, revised section 801(d). Section 801(d) now reads, in relevant part, as follows:

The 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).

17 U.S.C. 801(d). The change allows the Librarian of Congress to use the royalty fees that have been collected under title 17 to pay the arbitrators who determine the distribution of these same royalty fees. Payments to these arbitrators are identified as reasonable costs of the Library and shall be made in accordance with the regulations promulgated by the Librarian of Congress.

The final regulations announced herein amend 37 CFR 251.54 to specify how often and in what manner the arbitrators shall receive payment for their service on a CARP. In accordance with the administrative processes associated with making payments for services contracted for outside the Library of Congress, payment shall be made within 30 days of the receipt of a proper statement of cost. In the case of a distribution proceeding, each arbitrator shall receive payment directly from the Library of Congress. In the case of a rate adjustment proceeding, each arbitrator shall receive

payment directly from the parties participating in the proceeding.

The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for notice and comment, and a delay in the effective date, do not apply to the proposed amendments to Sec. 251.54, of title 37 of the CFR, because the regulations pertain to agency management of a contractual obligation. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for these amendments. Accordingly, the Copyright Office is adopting the amendments as final regulations upon publication in the **Federal Register**.

List of Subjects in 37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set out in the preamble, chapter II of title 37 of the Code of Federal Regulations is to be amended as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801-803.

2. Revise Sec. 251.54 to read as follows:

§251.54 Assessment of costs of arbitration panels.

(a) The ordinary and necessary costs of an arbitrator shall be assessed, in accordance with Sec. 251.38, as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution. These costs shall be considered reasonable costs incurred by the Librarian of Congress and the Copyright Office. Such costs shall be deducted from the royalty fees which have been deposited and collected under title 17 of the United States Code and which are the subject of the distribution proceeding.

(b) Each arbitrator shall itemize his or her expenses on the statement of cost in a format approved by the General Counsel and shall specify the name and address to whom payment should be made. In the case of a rate adjustment proceeding, each statement of cost shall specify each party's share of the total cost and the amount owed by that party to each arbitrator, or alternatively, reflect the method of payment agreed upon by the parties and the arbitrators.

(c) The statements of cost shall be sent to the Library of Congress no more frequently than once a month.

(1) In the case of a distribution proceeding, the statements of cost shall be sent to the Accounting Operations Section, Financial Services Directorate, Library of Congress, 101 Independence

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Avenue, SE, Washington, DC 20540-9112, and a copy of the statements of cost shall be submitted to the Copyright Office as directed in paragraph (c)(2) of this section.

(2) In the case of a rate adjustment proceeding, the statements of cost shall be sent to the CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024, or hand delivered to the Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20540.

(d) In the case of a rate adjustment proceeding, all parties to the proceeding shall have 30 days from receipt of a proper statement of cost in which to tender payment to the arbitrators, unless otherwise directed by the panel. Payment should be in the form of a money order, check, bank draft, or electronic fund transfer.

(e) In the case of a distribution proceeding, the Library of Congress shall reimburse the arbitrators directly from the royalty fees collected under title 17 of the United States Code which are the subject of the CARP proceeding. Payment of approved costs shall be made within 30 days of the receipt of a proper statement of cost in the form of an electronic fund transfer in accordance with the regulations of the Library of Congress.

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

Approved by:
James H. Billington,
The Librarian of Congress.

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