ANNOUNCEMENT

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

FINAL REGULATION

ASSESSMENT OF INTEREST REGARDING
THE CABLE COMPULSORY LICENSE

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88-2A]

Assessment of Interest Regarding the Cable Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: On May 10, 1988 the Copyright Office published a Notice of Inquiry in the **Federal Register** requesting public comment as to whether interest should be assessed on underpaid royalty sums due under the cable compulsory license of the Copyright Act. After examining the comments received and analyzing the matter, the Copyright Office issues this final regulation imposing an interest charge on underpaid royalties. The regulation shall take practical effect at the end of the 1989-1 accounting period and apply only to underpayments (including zero payments) occurring on or after July 1, 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 17, Washington DC, 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On May 10, 1988, the Copyright Office published in the **Federal Register** a Notice of Inquiry (NOI) seeking public comment as to whether or not the Office should assess interest on underpaid royalty sums due in the wake of the District of Columbia Court of Appeals' dicision in *Cablevision Systems Development Corp.* v. *Motion Picture Association of America*, 836 F.2d 599 (D.C. Cir.), *cert. denied*, ___ U.S. ___ (1988). 53 FR 16567 (1988). The NOI posed four questions: (1) Is a rule retroactively assessing interest legally permissible; (2) how should the interest rate, if adopted, be determined; (3) is it necessary for the Copyright Office to pay interest on refunds if it imposes interest on underpaid royalties; and (4) if interest is imposed, should it accrue from the last filing day of the accounting period in which underpayment occurred, or from some other date.

Comments received addressing these questions polarized between those interests representing cable systems and those interests representing copyright owners. Cable systems primarily attacked the Copyright Office's authority to adopt an interest rule. They argued that the Copyright Act and the legistative history are completely silent as to the issue of interest on late or underpaid royalties, and therefore there is nothing for the Copyright Office to interpret as part of its rulemaking power. Case law wherein other government agencies were allowed to assess interest is not applicable because the agencies involved in those cases have adjudicatory and enforcement powers which the Copyright Office does not possess. Furthermore, those cases did not involve copyright disputes and involved parties adjudicated to be wrongdoers. Cable systems are not wrongdoers, they contended, but instead the systems legitimately withheld sums based upon what they beleived to be a good faith interpretation of the term "gross receipts" appearing in Section 111 of the Copyright Act and backed for a time by the district court decision in the *Cablevision* litigation.

Cable systems in their comments also argued that sections 701, 702 and 111(d)(1) do not provide the requisite authority for assessing interest. Regarding sections 701 and 702, it is noted that the Copyright Office has never espoused a wide grant of authority under the Copyright Act and has in fact confined itself to interpreting only the express terms of the statue. There is no language in the Act concerning interest on unpaid royalties, and therefore nothing for the Office to interpret. Assessing interest falls within the realm of substantive lawmaking, which is clearly not contemplated by the Act. While the Office may admittedly "administer" the compulsory license, as described and allowed by the Court of Appeals in *Cablevision*, it cannot impose terms or conditions on the compulsory license not provided for in the statute. Finally, with regard to Section 111(d)(1), cable systems argued that the provisions contained therein are no more than ministerial. They allow the Register to prescribe forms and procedures for royalty deposits, but do not grant authority to control the amounts of the deposits, a function which is soley the province of the Copyright Royalty Tribunal.

Addressing the question of retroactivity posed by the NOI, cable systems submitted that if the Copyright Office does find that it has authority to impose a rule of interest for the cable compulsory license, that it impose the

rule prospectively only. It is argued that a retroactive application of an interest rule, designed primarily to collect interest on underpayments made as a result of the early stages of the *Cablevision* litigation, would be unjust, unfair, and impermissible according to judicially developed tests for retroactive application of newly created laws.

Specifically, the cable systems contend that application of the five factor test announced in *Retail, Wholesale and Department Store Union* v. *NLRB*, 466 F.2d 380 (D.C. Cir. 1972) precludes retroactive application of an interest rule. The test requires a determination as to whether (1) the particular case is one of first impression, (2) the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive rule imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

Cable systems argue that an interest rule for the compulsory license is clearly a case of first impression since the Copyright Office has never before asked for interest. Second, assessing interest is an abrupt departure from previous Office practice since, once again, the Office has never before requested that interest be paid on late or amended filings under the compulsory license. Third, cable systems relied on the fact that the Office did not assess interest, and imposition of an interest charge on sums due from previous accounting periods would take them by complete surprise. Fourth, retroactive imposition of interest is a considerable burden because it results in an immense and unexpected cost which cable systems could not have prepared for because the Copyright Office had never before charged interest on underpaid royalties. Finally, the statutory interest in collecting interest payments does not outweigh the burdens thrust upon cable systems due to their justifiable reliance on the Office's prior practice of not charging interest. Cable systems are already obliged to pay copyright owners large sums of money in light of the Court of Appeals decision in *Cablevision*, and therefore copyright owners are being substantially compensated, satisfying significant statutory interests under the compulsory license. With the statutory goals of the compulsory license virtually achieved, the added benefit of an interest charge does not outweigh the significant and substantial hardship that it will cause to cable systems. With these five factors so analyzed and considered, *Retail, Wholesale and Department Store Union* v. *NLRB* forbids retroactive application of an interest rule.

As to the remaining questions posed by the NOI—those concerning the accrual date, rate, and whether the Office should pay interest on refunds—cable systems offered virtually no commentary. Only the National Cable Television Association commented that if an interest rule is adopted, it should also apply to refunds made by the Office because "equity" requires such payments.

Comments from parties representing copyright owners favored imposition of interest on underpaid royalties and argued that application of an interest rule to prior accounting periods is permissible. Copyright owners had little problem in finding that the Copyright Office has authority to adopt an interest rule for the compulsory license. Although the provisions of the compulsory license are silent as to interest on underpaid royalties, numerous judicial decisions have approved an agency's imposition of interest on overdue sums of money even where the statute creating the monetary obligation is silent as to interest. *See, e.g., City of Chicago* v. *Department of Labor*, 753 F.2d 606 (7th Cir. 1985); *EEOC* v. *County of Erie*, 751 F.2d 79 (2d Cir. 1984); *Myron* v. *Chicoine*, 678 F.2d 727 (7th Cir. 1982); *Mitchell* v. *Reigel Textile, Inc.*, 259 F.2d 954 (D.C. Cir. 1958); *United States* v. *Philmac Mfg. Co.*, 192 F.2d 517 (3d Cir. 1951). And in *United States* v. *United Drill and Tool Corp*, 182 F.2d 998, 999 (D.C. Cir. 1950), the court held that "statutory obligation[s] in the nature of a debt bear interest even though the statute creating the obligation fails to provide for it." Copyright owners also argued that it did not matter whether the monetary obligation is due the United States or is only collected by the Government for later disbursal to third parties. *Compare, United States* v. *Goodman*, 572 F. Supp. 1284 (Ct. of Int'l Trade 1983) (customs duty due the United States) *with, Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962), *rev'd on other grounds sub. nom. NLRB* v. *Isis Plumbing and Heating Co.*, 322 F.2d 913 (9th Cir. 1963) (employers having obligations to compensate former employees remit monies to the Government for later disbursal to the employees).

Aside from judicial authority, copyright owners focused on the broad grants of administrative authority found within the Copyright Act itself. Citing the Court of Appeals decision in *Cablevision*, they argued that the Register is in essence the superintendent of the cable television copyright field, the "administrative overseer," and therefore the rulemaking power of sections 702 and 111(d)(1) of the Copyright Act extend to the interest issue. Without interest, copyright owners are deprived of money rightfully theirs and are not fully compensated as Congress intended when it created the compulsory license. That Congress intended copyright owners receive interest on the royalty fund is supported by the language of section 111(d)(2) which provides that collected royalties "shall be invested in interest bearing United States securities for later distribution *with interest* * * *." (emphasis added). Thus, to fulfill the purpose and goal of the Statute, the Copyright Office is obliged to impose an interest rule.

Copyright owners also argued that an application of an interest rule to prior accounting periods would not raise retroactivity concerns. Like cable systems, their arguments are premised on equitable considerations. Applying the five part test of *Resale, Wholesale and Department Store Union* v. *NLRB* permits retroactive application of interest, and equity virtually requires it, copyright owners contend. Acknowledging that this is a case of first impression, copyright owners criticize the cable systems' position that they justifiably relied upon the Copyright Office's practice of not assessing interest on royalty underpayments.

Specifically, although the Copyright Office has not previously requested interest on late and amended filings, neither has the Office declared that interest on underpaid royalties is not required to obtain the compulsory license. Rather, the Copyright Office has had no policy or rule regarding interest at all. Thus, under the second and third factors of *Retail, Wholesale*, there has been no departure from a previous rule, nor could there have been justifiable reliance by cable systems, under the fourth factor, which looks to the degree of burden shouldered by a party against whom a retroactive rule is applied, copyright owners argue that cable systems' claims of unforeseeable financial costs are disingenuous. When cable systems disputed the Copyright Office's interpretation of gross receipts under the compulsory license, they certainly must have realized, or should have realized, that if their position were not vindicated they would have to pay the sums withheld, plus interest to compensate copyright owners for their wrongful withholding. Equitably, what cable systems should have done was to either place their withheld sums in escrow or pay them into the royalty pool for later refund (so as to generate interest on those funds). Instead, cable systems intentionally withheld the sums and benefitted from the use of those monies. Given these considerations and

cable systems' opportunity to avoid what they now claim will be substantial financial burdens in paying interest, they cannot be heard to claim that the burden is unexpected and unjust. Finally, the statutory interest in applying an interest rule retroactively outweighs claims of reliance or extreme financial burden. Allowing cable systems to withhold interest would not only be contrary to the statutory plan of full and complete compensation of copyright owners, but would encourage further underpayments in the future.

Copyright owners also directed their comments to the other questions posed by the NOI. On the issue of the time period from which interest should begin to accrue, copyright owners were in unanimous agreement that interest should accrue from the last filing day of the applicable accounting period. On the issue of interest payments for refunds made to cable systems, those few commentators who did address the question stated that the law was not symmetrical when the United States Government is involved and that the Government is not required to pay interest when the statute creating the payment obligation is silent on the issue.

There was some debate amongst copyright owners as to the applicable interest rate that should be adopted. Some commentators advocated adoption of the interest rate for late payments found at section 6621 of the Internal Revenue Code, while others suggested an average of the interest rate paid on royalty funds deposited in the U.S. Treasury (since royalties are deposited in Treasury accounts as they are received by the Copyright Office and not all at once) based on a weighted capital costing approach. Finally, several commentators recommended adoption of the interest rate applicable to the funds deposited in the Treasury by the Copyright Office immediately following the close of the accounting period.

2. Policy Decision of the Copyright Office

The Copyright Office has carefully examined the comments and reply comments submitted by the interested parties, and has decided to issue an interest regulation for the cable compulsory license. The Office concludes that it does have the authority to adopt an interest regulation but, on the grounds of equitable considerations, and in the absence of a court decision with respect to a specific underpayment, will apply the regulation only prospectively, beginning July 1, 1989, and not to underpayments occurring before that date. Interest will begin to accrue from the first day after the last filing date of the applicable accounting period in which an underpayment is made. The interest rate shall be the rate applicable to the funds invested by the Copyright Office with the U.S. Treasury on the first business day after the last filing date of the relevant accounting period. The Copyright Office will not, however, include interest with refunds made to cable systems pursuant to its regulation on refunds.

As the Copyright Office indicated in the NOI, there exists sufficient authority to support the Office's adoption of an interest rule. Although the Copyright Act is silent on the question of interest in the context of underpayments, the Office believes its general rulemaking authority, when read in the light of the *Cablevision* decision, provides the necessary authority for the Office to consider and adopt an interest rule for the compulsory license. 17 U.S.C. 702 provides that "The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." It is apparent that the operation of the compulsory license and the collection of royalty funds is part of the functions and duties of the Register. And, as recognized by the Court of Appeals in *Cablevision*, "Congress saw a need for continuing interpretation of section 111 and thereby gave the Copyright Office statutory authority to fill that role." *Cablevision Systems Development Corp.* v. *Motion Picture Association of America*, 836 F.2d 599, 610 (D.C. Cir.), *cert. denied*, _____ U.S. _____ (1988).

The goal of the compulsory license is to guarantee that copyright owners receive full compensation for their works within the statutory scheme of the license, while at the same time allowing public access to the broadcast signals, if the terms of the compulsory license are satisfied. When royalty payments are not made on time in accordance with the terms of the license, the goal of full compensation is frustrated and copyright owners suffer from the present value loss of funds. The Copyright Office therefore concludes that it is consistent with the intention of Congress and the courts to impose a rule requiring interest payments on underpaid royalties pursuant to the cable compulsory license.

The issue which has particularly concerned the Copyright Office is the question of a retroactive application of an interest regulation. Copyright owners made clear in their comments that their immediate and specific concern in seeing an interest rule adopted was to cover underpayments which were made before the Court of Appeals decision in *Cablevision* upheld the validity of the Copyright Office's definition of "gross receipts." After reviewing the comments of both cable systems and copyright owners, the Copyright Office is persuaded that the five part retroactivity test announced in *Retail, Wholesale and Department Store Union* v. *NLRB*, 466 F.2d 380 (D.C. Cir. 1972) is applicable to this proceeding.

In applying the *Retail Wholesale* test to the present case, the Copyright Office acknowledges that interest assessment on underpaid royalties is a situation of first impression. The Office has never before formally addressed the issue of interest on underpaid royalties, or the issue of interest in any context where the Copyright Office collects or disburses monies. Although the Office has never before addressed interest, it has, in a sense, by default had a policy of not assessing interest on underpaid royalties since there is currently no policy of assessment. Copyright owners argued that this policy of not assessing interest was not really a conscious policy at all, but was merely the result of never having considered the issue. Cable systems, however, argued that the fact the Office never before required or requested interest on underpaid royalties speaks for itself, and to now adopt an interest rule represents an abrupt departure from the Office's former policy.[1] The Copyright Office agrees that today's ruling does represent a departure from its previous practice, and therefore the Office must assess the impact of such a change upon cable systems making amended and/or late payments.

The final three factors of the *Retail, Wholesale* test examine the extent to which the party against whom the new rule is imposed relied on the former rule, the burden the new rule will cause that party, and whether the statutory interest in imposing the new rule retroactively outweighs the equities of that party's reliance on the old rule. The Copyright Office acknowledges cable systems' claims that they relied on the Office's policy of not assessing interest while *Cablevision* was being litigated, and notes that the circumstances of the litigation produced an added element of reliance. When the district court issued its opinion overturning the Copyright Office's gross receipts regulation, many cable systems adjusted their royalty payments downward in reliance on that decision. Given that the district court decision was the law for a certain period, reliance on that decision (and the subsequent royalty underpayments) was reasonable, although the Office cautioned cable systems repeatedly that it expected the regulation to be reinstated by the Court of Appeals. It is possible, if not probable, that cable

[1] Cable systems also may have been misled by the position of the Copyright Royalty Tribunal, which declined to assess interest on payments withheld pending appeal of a ratemaking decision. Although the Tribunal has broad authority in the specific areas of ratemaking and royalty distribution, unlike the Copyright Office, it has no

systems might have acted differently had they known that, in the event the district court decision was reversed, the Copyright Office would assess interest on their underpayments. The equities are nearly equal, but the Office concludes that imposition of the interest rule to prior accounting periods would be unfair since cable systems relied on the *Cablevision* district court opinion.

The Copyright Office also acknowledges that retroactive assessment of the interest regulation would cause a substantial and unanticipated financial burden. For the above stated reasons, cable systems might have been able to insulate themselves from paying large sums in interest charges (by placing underpaid royalties in interest bearing accounts) had they been aware that the Copyright Office would someday adopt an interest rule and apply it retroactively. Neither can the Office find the statutory interest for assessing interest retroactively to be so great as to outweigh the financial burdens. A prospective application of the interest regulation will serve as notice that cable systems should be prepared to pay interest if and when they underpay the proper cable royalty fee, for whatever reason. The Copyright Office concludes that, while it is a very close question, the equities on balance favor only a prospective application of the interest regulation adopted herein. The interest regulation adopted today shall become effective July 1, 1989, and affects any underpayments made on or after the date including underpayments and zero payments for royalties due for the 1989–1 accounting period.

The Office's decision to apply the regulation only prospectively should not be considered to have any implications for assessment of interest as part of a judgment of liability against a cable system in a court proceeding. Post-judgment assessment of interest is common, and the Office agrees that copyright owners should receive interest on any monies due under the cable compulsory license when they litigate and prevail against noncomplying cable systems.

Moreover, while the Office recognizes that copyright owners may elect not to sue merely for interest lost through past underpayments of cable royalties, if a copyright owner did sue, the Copyright Office would support the owner's right to collect interest based on a court judgement.

Our decision not to assess interest retroactively is related to our administrative authority and the comparative equities of a retroactive application of a rule. On balance, we conclude that our primary concern for fair administration of the cable compulsory license is better served by issuance of an interest regulation, assuring full compensation to copyright owners in the future. Cable system operators will be fully aware of the interest obligation, and this should serve as a disincentive to underpayments in the future.

3. Interest Rate

Regarding the applicable rate of interest that should be prescribed by the Office, the MPAA stated in its comments that the rate should be determined by "examin[ing], mathematically, how cable royalty monies that were deposited timely have in fact grown since their deposit, by virtue of the interest they actually earned under 17 U.S.C. 111(d)(2), and to require that late payments be augmented to the same extent," or "if this calculation should prove unduly burdensome" adopt the "interest rule for late payments found in the Internal Revenue Code, 28 U.S.C. 6621." Other copyright owner commentators suggested using a weighted capital costing approach to select an average rate of interest paid on royalty funds owner several accounting periods. † These approaches, however, are for the most part geared toward developing interest rates for prior accounting periods. Since the Copyright Office will not be assessing interest on underpaid royalties from prior accounting periods, they are not applicable to this proceeding. The Office also does not feel that it should adopt the interest regulation of the Internal Revenue Code because that rule operates as a penalty for parties making late filings. The Copyright Office does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis. Therefore, to achieve this equitable result, the Office chose a rate which would most closely approximate the interest earned on royalty payments made within the accounting period filing dates.

As part of its standard practice, the Copyright Office makes a deposit or royalty funds recently received with the U.S. Treasury on the first business day after the close of an accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from cable carriage during that accounting period, most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed predetermined rate. However, the Office concludes that this drawback is mitigated by the relative speed and certainly with which the * Treasury interest rate is available to the Office and the public. Therefore, the interest rate applicable under the interest regulation adopted herein shall be the interest rate paid by the Treasury on the cable royalty funds deposited by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs.

While the Copyright Office will be requiring interest on underpaid cable royalties, the Office has concluded that it will not pay interest on royalty refunds made to cable systems. Copyright owner commentators argued that the law on interest is not symmetrical when the United States Government is involved, and cited several cases where interest was not allowed to run on claims against the Government. None of the cable system commentators addressed the issue of interest on refunds.

The Office has concluded that payment of interest on refunds made pursuant to 37 CFR 201.17(j) is administratively impracticable. The Office is reluctant to deduct monies from royalty pools to cover the administrative costs of paying interest on refunds, and it would be presented with difficult and costly procedures for determining the correct rate of interest to be paid. Furthermore, the Office notes that its current refund policy is not required by the compulsory license statute, and therefore it is not obliged now to include an interest charge with those payments. Moreover, since most refunds result from cable system error, the systems can avoid the problem by careful review of statements of account and quality controls before filing the statements. The Office concludes the copyright owners, which already bear the administrative costs of the refund procedure, should not be required to bear the costs of the interest assessment procedures as well.

Finally, the Copyright Office found unanimous agreement among copyright owner commentators regarding when interest on underpayments should begin to accrue. The interest regulation therefore states that interest begins to accrue starting on the first day after the close of the relevant accounting period filing deadline.

4. Implementation of the interest regulation

The interest rule adopted herein becomes effective July 1, 1989, and shall operate prospectively from thereon. Thus, any underpayment or zero payment of royalties pursuant to the cable compulsory license resulting from

†Error; line should read:
"over several accounting periods."

*Error; line should read:
"speed and certainty with which the"

carriage of copyrighted programming on or after January 1, 1989, shall be subject to an interest assessment.

Cable systems submitting royalty payments in an untimely fashion must include the proper interest charge with their payment. Cable systems must perform their own interest charge calculations and may obtain the proper interest rate for the applicable accounting period(s) by contacting the Licensing Division, United States Copyright Office, 101 Independence Avenue SE., Washington, DC 20540, Telephone: (202) 707–8150. In cases where interest is not paid or becomes due because of late receipt of a statement of account, the Copyright Office will notify the cable system of the interest obligation. The Office shall not require, nor notify a cable system of an interest charge when the interest due on a particular royalty sum paid by a cable system is less than or equal to five dollars ($5.00).

Interest calculated in accordance with the Copyright Office's regulation shall be compounded annually. The accrual period for a particular royalty payment being submitted by a cable system in which interest is due shall end on the date appearing on the certified check, cashier's check, or money order submitted, provided that the payment is received by the Copyright Office within five business days of that date. If the payment is not received within five business days, then the accrual period shall end on the date of actual receipt by the Copyright Office.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable television, Cable compulsory license.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94–553, 90 Stat. 2541 [17 U.S.C. 702].

§ 201.17 [Amended]

2. Section 201.17(i) is amended by inserting the designation "(1)" following the heading "Royalty fee payment" and before "The," and by adding a new paragraph (2) to read as follows:

(i) * * *

(2) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments of royalties for the cable compulsory license occurring within that accounting period. The accrual period shall end on the date appearing on the certified check, cashier's check, or money order submitted by a cable system, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of actual receipt by the Copyright Office.

(i) The interest rate applicable to a specific accounting period shall be determined by reference to the interest rate paid by the United States Treasury on the first deposit of royalty fees made by the Copyright Office with the Treasury after the close of that accounting period. The interest rate paid by the Treasury for a particular accounting period may be obtained by contacting the Licensing Division of the Copyright Office.

(ii) Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars ($5.00).

* * * * *

Dated: March 23, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

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BILLING CODE 1410–09–M

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 708(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–POIA requirements.