



ANNOUNCEMENT

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

REQUEST FOR COMMENTS.

NONCOMMERCIAL EDUCATIONAL BROADCASTING COMPULSORY LICENSE

The following excerpt is taken from Volume 62, Number 191 of the
Federal Register for Thursday, October 2, 1997 (p. 51619-51621)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96-6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment certain settlement proposals for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license.

DATES: Comments and notices of intent to participate are due by November 3, 1997.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, S.E., Washington, D.C. 20559-6000.

FOR ADDITIONAL INFORMATION:

William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380. Telfax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates.

On October 18, 1996, the Library published a notice in the *Federal Register* requesting comments from interested parties as to the need for a CARP proceeding to adjust the section 118 terms and rates. 61 FR 54459 (Oct. 18, 1996). After a protracted negotiation period, certain parties identified the need for a CARP proceeding, and the Library has announced the precontroversy discovery period and the initiation of the CARP. Order in Docket No. 96-6 CARP NCBRA (July 30, 1997).

Most of the rates and terms adopted for the section 118 license are for the use of works of copyright owners represented by one or more of the performing rights societies or organizations.

Although not all copyright owners belong to such organizations, their works are nonetheless subject to usage under the section 118 license. It is, therefore, necessary to adopt royalty terms and rates for those "unaffiliated" copyright owners whose identity is not known, and whose interests are not currently represented in this proceeding.

Adjusting the Terms and Rates for Unaffiliated Copyright Owners

Section 251.63 of 37 CFR prescribes the procedure for adopting terms and rates for unaffiliated copyright owners under section 118. Because the identity of such copyright owners is not known, copyright users are unable to negotiate with them to reach private agreements; and their interests would not be represented if the matter were submitted to a CARP. Section 251.63 of the rules, therefore, allows copyright users to submit their proposals for adjustment of the terms and rates for the section 118 license to the Librarian of Congress. The Librarian then submits the proposals to a public notice and comment proceeding, whereby unaffiliated copyright owners who would be affected by the proposals are given the opportunity to challenge them. The unaffiliated copyright owners must submit their challenges by a date certain and must be willing to participate in the CARP proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by unaffiliated copyright owners who will not participate in a CARP proceeding, then the Librarian will adopt the proposals of the copyright users.

Accordingly, unaffiliated copyright owners must submit their written challenges to the Librarian of Congress

no later than close of business on November 3, 1997. The content of the written challenge should describe the unaffiliated copyright owner's interest in this proceeding, which proposal described below that the owner finds objectionable, and the reasons for the challenge.

In addition, unaffiliated copyright owners submitting written challenges must also submit accompanying notices of intent to participate. Failure to submit a notice of intent to participate will preclude an unaffiliated copyright owner from participating in this proceeding and consideration of his or her written challenge. Those unaffiliated copyright owners who do submit notices of intent to participate will be contacted by the Librarian as to when their written direct cases are due. It is the intention of the Librarian to include such owners in the CARP proceeding that shall commence on December 31, 1997.

Proposals for Adjustment of Terms and Rates

Three parties, representing certain copyright users of works in connection with noncommercial broadcasting, filed proposals for adjustment of terms and rates.

1. National Religious Broadcasters Music Licensing Committee

The National Religious Broadcasters Music Licensing Committee ("NRBMLC") proposes a rate for the public performance of copyrighted published nondramatic musical compositions not in the repertory of the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or SESAC by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and not affiliated with National Public Radio. The royalty rate for such performances from 1993-1997 is \$1 per performance, and is established in 37 CFR 253.6(c)(4). NRBMLC proposes that the rate remain the same for the period 1998-2002.

In addition, NRBMLC proposes a rate for the recording of nondramatic performances and displays of musical works on and for the radio and television programs of public broadcasting entities, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities.

The rates for such uses, other than in a National Public Radio produced radio program, for the 1993-1997 period are:
Feature composition.....\$70

Feature (concert)
(per half hour).....\$1.45
Background composition.....\$35

These rates are codified at 37 CFR 253.7(b)(4). NRBMLC proposes that the rates for the 1998-2002 period remain the same.

2. Public Broadcasting Service and National Public Radio

The Public Broadcasting Service (PBS) and National Public Radio (NPR) submitted a joint proposal to adjust the terms and rates for copyrighted works of unaffiliated copyright owners used by them for the 1998-2002 period. For adjustment of rates, PBS and NPR propose a one-time upward adjustment to the relevant rates in the amount of 6.2 percent. This one-time adjustment equals the average of the increases that would result from annual 2 percent increases over a five-year period.

With respect to terms, PBS and NPR propose that the current terms for the use of unaffiliated copyright owners' works by PBS and NPR remain unchanged, except to clarify that the proposed rates would not apply to works the rights to which are licensed by ASCAP, BMI, SESAC, The Harry Fox Agency, or the National Music Publishers Association. Unaffiliated copyright owners should consult 37 CFR part 253 for a description of the current terms.

The proposed changes in rates of PBS and NPR are as follows:

(a) Section 253.4 of the rules establishes the rates for performance of nondramatic musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d). PBS and NPR propose that the changes in these rates for the 1998-2002 period be as follows:

(i) For the performance of such a work in a feature presentation of PBS, \$211.53, up from the current rate of \$199.18;

(ii) For the performance of such a work as background or theme music in a PBS program, \$53.59, up from the current rate of \$50.46;

(iii) For the performance of such work in a feature presentation of a station of PBS, \$18.08, up from the current rate of \$17.02;

(iv) For the performance of such a work as background or theme music in a program of a station of PBS, \$3.81, up from the current rate of \$3.59;

(v) For the performance of such a work in a feature presentation of NPR, \$21.44, up from the current rate of \$20.19;

(vi) For the performance of such a work as background or theme music in an NPR program, \$5.20, up from the current rate of \$4.90;

(vii) For the performance of such a

work in a feature presentation of a station of NPR, \$1.52, up from the current rate of \$1.43; and

(viii) For the performance of such a work as background or theme music in a program of a station of NPR, \$.54, up from the current rate of \$.51.

(b) Section 253.7 of the rules establishes the rates for the recording of nondramatic performances and displays of musical works on and for the radio and television programs of public broadcasting entities, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. PBS and NPR propose that the changes in these rates be as follows:

(i) For the use of a musical work in a PBS-distributed program, the royalty fees for the 1998-2002 period would be calculated by multiplying the following per composition rates by the number of different compositions in that PBS-distributed program:

Feature--\$106.04, up from the current rate of \$99.85

Concert feature (per minute)--\$31.84, up from the current rate of \$29.98

Background--\$53.59, up from the current rate of \$50.46

Theme

Single program or first series program--\$53.59, up from the current rate of \$50.46

Other series program--\$21.75, up from the current rate of \$20.48

(ii) For such uses other than in a PBS-distributed television program, the royalty fee for the 1998-2002 period would be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

Feature--\$8.76, up from the current rate of \$8.25

Concert feature (per minute)--\$2.30, up from the current rate of \$2.17

Background--\$3.81, up from the current rate of \$3.59

Theme

Single program or first series program--\$3.81, up from the current rate of \$3.59

Other series program--\$1.52, up from the current rate of \$1.43

(iii) For uses in a musical work in a NPR program, the royalty fee for the 1998-2002 period would be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR:

Feature--\$11.48, up from the current rate of \$10.81

Concert feature (per half hour)--\$16.85,

up from the current rate of \$15.87
Background--\$5.75, up from the current
rate of \$5.41

Theme

Single program or first series program--
\$5.75, up from the current rate of \$5.41
Other series program--\$2.29, up from the
current rate of \$2.16

(iv) For such uses other than in a NPR-
produced radio program:
Feature--\$.74, up from the current rate of
\$.70

Feature (concert) (per half hour)--\$1.54,
up from the current rate of \$1.45
Background--\$.37, up from the current
rate of \$.35

(c) Section 253.8 of the rules establishes
rates and terms for the use of pictorial,
graphic, and sculptural works by public
broadcasting entities. The rates and
terms include the making of
reproductions described in 17 U.S.C.
118(d)(3). PBS and NPR propose that the
change in rates for the 1998-2002 period
be as follows:

(i) For such uses in a PBS-distributed
program:
Featured display--\$64.78, up from the
current rate of \$61.00
Background and montage display--
\$31.59, up from the current rate of \$29.75
Program identification or thematic use.--
\$127.71, up from the current rate of
\$120.25

Display of an art reproduction--\$41.95,
up from the current rate of \$39.50

(ii) For such uses in other than PBS-
distributed programs:
Featured display--\$41.95, up from the
current rate of \$39.50
Background and montage display--
\$21.51, up from the current rate of \$20.25
Program identification or thematic use--
\$85.76, up from the current rate of \$80.75
Display of an art reproduction--\$21.51,
up from the current rate of \$20.25

Rate Adjustment for Section 253.7(b)(4)

Review of the rate proposals of
NRBMLC and PBS and NPR reveals that
there is a conflict between their proposed
rates for the recording of nondramatic
performances and displays of musical
works on and for the radio and television
programs of public broadcasting entities,
other than in a National Public Radio
produced program, and for the making,
reproduction, and distribution of copies
and phonorecords of public broadcasting
programs containing such nondramatic
performances and displays of musical
works solely for the purpose of
transmission by public broadcasting
entities. 37 CFR 253.7(b)(4). NRBMLC
proposes that the rates remain the same
as the current rates, while PBS and NPR
propose an increase of 6.2 percent. To
resolve this conflict, the Librarian is

announcing that he will adopt the
proposal of PBS and NPR, described
above, unless NRBMLC or some other
party challenges the proposal, in which
case the matter will be resolved by the
CARP in this proceeding.

Marilyn J. Kretsinger,
Assistant General Counsel.

[FR Doc. 97-26062 Filed 10-1-97; 8:45 am]

BILLING CODE 1410-33-P

