



# ANNOUNCEMENT

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

NOTICE OF INITIATION OF NEGOTIATION PERIOD.

## DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING

The following excerpt is taken from Volume 64, Number 138 of the  
*Federal Register* for Tuesday, July 20, 1999 (pp. 38861-38862)

### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 255

[Docket No. 99-4 CARP DPRA]

#### Digital Phonorecord Delivery Rate Adjustment Proceeding

**AGENCY:** Copyright Office, Library of  
Congress

**ACTION:** Notice of initiation of negotiation  
period.

**SUMMARY:** The Copyright Office of the  
Library of Congress is announcing the  
initiation of the negotiation period for  
determining reasonable rates and terms for  
digital transmissions that constitute a digital  
phonorecord delivery for the period  
commencing January 1, 2001. This  
negotiation period is intended to promote an  
industry-wide agreement as to the rates and  
terms for digital phonorecord deliveries.

**DATES:** The negotiation period begins on  
July 20, 1999, and ends on December 31,  
1999. Petitions for an arbitration for rate  
adjustment must be filed during the year  
2000.

**ADDRESSES:** If sent by mail, an original  
and five copies of the petition should be  
addressed to: Copyright Arbitration Royalty  
Panel (CARP), P.O. Box 70977, Southwest  
Station, Washington, DC 20024. If hand  
delivered, an original and five copies of the  
petition should be brought to: Office of the  
Copyright General Counsel, James Madison  
Memorial Building, Room LM-403, First and  
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), P.O. Box 70977, Southwest Station,  
Washington, DC 20024. Telephone: (202)  
707-8380 or Telefax: (202) 252-3423.

#### SUPPLEMENTARY INFORMATION:

On November 1, 1995, Congress passed the  
Digital Performance Right in Sound  
Recordings Act of 1995 ("Digital  
Performance Right Act"), Pub. L. 104-39,  
109 Stat. 336. Among other things, it  
confirms and clarifies that the scope of the  
statutory license to make and distribute  
phonorecords of nondramatic musical  
compositions, 17 U.S.C. 115, includes the  
right to distribute or authorize distribution by  
means of a digital transmission which  
constitutes a "digital phonorecord delivery."  
17 U.S.C. 115(c)(3)(A). A "digital  
phonorecord delivery" is defined as "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 of a phonorecord of that sound  
recording \* \* \* ." 17 U.S.C. 115(d).

The Digital Performance Right Act  
established that the rate for all digital  
phonorecord deliveries ("DPDs") made or  
authorized under a compulsory license on or  
before December 31, 1997, was the same as  
the rate in effect for the making and  
distribution of physical phonorecords for that  
period. 17 U.S.C. 115(c)(3)(A)(i). For digital  
phonorecord deliveries made or authorized  
after December 31, 1997, the Digital  
Performance Act established a two-step  
process for determining the terms and rates:  
either the copyright owners of nondramatic  
musical works and those persons entitled to  
obtain a license may negotiate the rates and  
terms for the statutory license, or they may  
participate in a Copyright Arbitration Royalty  
Panel ("CARP") proceeding. 17 U.S.C.  
115(c)(3)(A)-(D). Such rates and terms,

whether negotiated by the parties or  
determined by a CARP, are to distinguish  
between "digital phonorecord deliveries  
where the reproduction or distribution of a  
phonorecord is incidental to the transmission  
which constitutes the digital phonorecord  
delivery, and (ii) digital phonorecord  
deliveries in general." 17 U.S.C.  
115(c)(2)(C)-(D). This two-step process is to  
be repeated "in each fifth calendar year after  
1997;" 17 U.S.C. 115(c)(3)(F), unless the  
parties agree to different years for the  
repeating

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and concluding of such proceedings. 17  
U.S.C. 115(c)(3)(B)-(F).

The first proceeding to adjust the royalty  
rates for the delivery of digital phonorecords  
concluded earlier this year. In that  
proceeding, the parties reached an industry-  
wide agreement setting the rate for the  
delivery of digital phonorecords and  
deferring until the next scheduled rate  
adjustment proceeding the determination of  
the rate for the delivery of a digital  
phonorecord where the reproduction or  
distribution is incidental to the transmission  
which constitutes a digital phonorecord  
delivery. In accordance with Sec. 251.63(b),  
the Librarian published a notice in the  
**Federal Register** requesting public comment  
on the proposed rates and terms. 63 FR  
71249 (December 24, 1998). Upon receiving  
no comments opposing the rates and terms  
for the delivery of digital phonorecords set  
forth in the December 24, 1998, notice, the  
Librarian adopted the proposed rates and  
amended part 255 of the Copyright Office's  
rules accordingly. 64 FR 6221 (February 9,  
1999). The newly adopted regulation requires  
that the two-step process for adjusting the  
royalty rates be repeated in 1999 in order "to  
determine the applicable rates and terms \* \*

\* during the period beginning January 1, 2001." 37 CFR 255.7.

**Initiation of Voluntary Negotiations**

Pursuant to sections 115(c)(3)(B)-(F) and Sec. 255.7, the Copyright Office of the Library of Congress is initiating the voluntary negotiation period for the determination of reasonable rates and terms for the delivery of digital phonorecords and the delivery of a digital phonorecord where the reproduction or distribution is incidental to the transmission which constitutes a digital phonorecord delivery for the two-year period commencing January 1, 2001. The negotiation period shall run from the date of publication of this notice in the **Federal Register** and end on December 31, 1999. Such terms and rates shall distinguish between (a) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (b) digital phonorecord deliveries in general.

**Petitions**

In the absence of a license agreement negotiated under 17 U.S.C. 115(c)(3)(B)-(C), a party with a significant interest in establishing reasonable rates and terms for this compulsory license may file a petition to convene a CARP with the Copyright Office. Accordingly, the petition shall detail petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the rate. The petition must also identify the extent to which the petitioner's interest is shared by other owners and users; owners and users with similar interests may file a joint petition. 37 CFR 251.62. Petitions should be filed with the Copyright Office during the year 2000.

Dated: July 15, 1999.

**David O. Carson,**  
*General Counsel.*

[FR Doc. 99-18489 Filed 7-19-99; 8:45 am]

BILLING CODE 1410-31-P