



ANNOUNCEMENT

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

INTERIM RULE AMENDMENT.

NOTICE AND RECORDKEEPING FOR NONSUBSCRIPTION DIGITAL TRANSMISSIONS

The following excerpt is taken from Volume 64, Number 181 of the *Federal Register* for Monday, September 20, 1999 (pp. 50758-50759)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99-5A]

Notice and Recordkeeping for Nonsubscription Digital transmissions

AGENCY: Copyright Office, Library of Congress

ACTION: Interim rule amendment.

SUMMARY: To adjust for changes brought about by the passage of the Digital Millennium Copyright Act of 1998, the Copyright Office of the Library of Congress is amending the regulation that requires the filing of an initial notice of digital transmissions of sound recordings under statutory license with the Copyright Office.

EFFECTIVE DATE: September 20, 1999.

FOR FURTHER INFORMATION

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SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Public Law 104-39, 109 Stat. 336 (1995). The DPRA gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission. 17 U.S.C. 106(6). The new right, however, was subject to certain

limitations, including exemptions for certain digital transmissions, 17 U.S.C. 114(d)(1), and the creation of a statutory license for nonexempt digital subscription services. 17 U.S.C. 114(d)(2).

The statutory license requires adherence to regulations under which copyright owners may receive reasonable notice of use of their sound recordings under the statutory license, and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2). On May 13, 1996, the Copyright Office initiated a rulemaking proceeding to promulgate regulations to govern the notice and recordkeeping requirements. 61 FR 22004 (May 13, 1996). This rulemaking concluded with the issuance of interim rules governing the filing of an initial notice of digital transmissions of sound recordings under the statutory license, 37 CFR 201.35, and the filing of reports of use of sound recordings under statutory license, 37 CFR 201.36. See 63 FR 34289 (June 24, 1998).

At the time these regulations were issued, only three noninteractive, subscription, digital transmissions services (DMX, Inc., Digital Cable Radio Associates/Music Choice, and Muzak, Inc.)¹ were in operation and considered eligible for the license. Consequently, the Office prescribed a period for filing initial notices which required any service already operating in accordance with the section 114 license to submit its notice within 45 days of the effective date of the regulation. Section 201.35(f) reads, in part, as follows: "A Service shall file the Initial Notice with the Licensing Division of the Copyright Office prior to the first transmission of sound recordings under the license, or within 45 days of the effective date of this regulation." (Emphasis added).

¹These services were incorrectly identified in the August 4, 1999, notice as nonsubscription services.

Subsequently, the President signed into law the Digital Millennium Copyright Act of 1998 ("DMCA"). Among other things, the DMCA expanded the section 114 compulsory license to allow a nonexempt, eligible nonsubscription transmission service and a preexisting satellite digital audio radio service to perform publicly a sound recording by means of certain digital audio transmissions, subject to compliance with notice and recordkeeping requirements. 17 U.S.C. 114(f).

The notice and recordkeeping requirements found in Secs. 201.35 and 201.36 would appear to apply to any service eligible for the section 114 license, including those newly eligible to use the license under the amended provisions of the license. However, these regulations provide no opportunity for a newly eligible nonsubscription transmission service which was in service prior to the passage of the DMCA to make a timely filing of its initial notice of transmission.

Therefore, the Copyright Office proposed an amendment to Sec. 201.35(f) which would extend the period for filing the initial notice to October 15, 1999, in order to allow the eligible nonsubscription services which were in operation prior to the passage of the DMCA an opportunity to file their initial notice timely. 64 FR 42316 (August 4, 1999).

On September 2, 1999, the Recording Industry of America, Inc. ("RIAA") filed a comment supporting, in general, the Office's proposal to amend the date by which a nonexempt, eligible nonsubscription service already in operation could file a timely initial notice. RIAA expressed concern, however, that the proposed language is overly broad and would allow not only the newly eligible nonsubscription services an opportunity to file an initial notice timely, but inadvertently extend the filing period for any preexisting digital subscription services which had not filed in accordance with the original rule. To

avoid any confusion on this point, the Office is amending the rule to indicate that any subscription service in operation prior to September 3, 1998, had until that date to file its initial notice with the Copyright Office, in addition to establishing an October 15, 1999, filing deadline for any eligible, nonsubscription service which is currently in operation. Of course, any new service which chooses to make use of the license may file its initial notice after these dates, so long as the service files its initial notice with the Licensing Division prior to the first transmission of a sound recording.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress which is part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Register of Copyrights has considered the effect of the amendment on small businesses. The Register has determined that the amendment would not have a significant economic impact on a substantial number of small entities that would require provision of special relief

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for small entities. The amendment is designed to minimize any significant economic impact on small entities.

List of Subjects in 37 CFR Part 201 Copyright.

Final Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended as follows:

PART 201--GENERAL PROVISIONS

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

Authority: 17 U.S.C. 702.

Sec. 201.35 [Amended]

2. Section 201.35(f) is amended by removing the phrase "or within 45 days of the effective date of this regulation." and adding in its place the following: * * * or by September 3, 1998, in the case of a Service that makes subscription transmissions before or on that date, or by October 15, 1999, in the case of a Service that makes eligible nonsubscription transmissions before, or on, that date. * * *

Dated: September 10, 1999.

Marybeth Peters,
Register of Copyrights.

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

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