



ANNOUNCEMENT

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

INITIATION OF VOLUNTARY NEGOTIATION PERIOD

NEW SUBSCRIPTION SERVICES AND THE DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS

The following excerpt is taken from Volume 66, Number 29 of the *Federal Register* of Monday, February 12, 2001 (pp. 9881-9882)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. 2001-2 CARP DTNSRA]

New Subscription Services and the Digital Performance Right in Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of voluntary negotiation period.

SUMMARY: The Copyright Office is announcing the initiation of the six-month voluntary negotiation period for determining reasonable rates and terms for the public performance of sound recordings by new subscription services. The Office is also requesting that parties participating in the negotiation process to so notify the Office.

EFFECTIVE DATE: The voluntary negotiation period begins on February 12, 2001. Notification of participation in the negotiation period is due by March 1, 2001.

ADDRESSES: Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the 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, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: In 1995, Congress passed the Digital Performance

Right in Sound Recording Act which gave copyright owners of sound recordings an exclusive right to perform publicly their copyrighted works by means of a digital audio transmission, subject to certain limitations and exemptions. 17 U.S.C. 106(6). Among the limitations placed on the performance of a sound recording was the creation of a statutory license for performances made by non-exempt, non-interactive digital subscription services. 17 U.S.C. 114. Initial rates and terms for transmissions made by these services have been set by order of the Librarian, following a Copyright Arbitration Royalty Panel ("CARP") proceeding which had been convened for this purpose. See 63 FR 25394 (May 8, 1998).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 ("DCA"), Public Law 105-304, to cover additional digital audio transmissions. These include "eligible nonsubscription transmissions" and those transmissions made by "new subscription services" and "preexisting satellite digital audio radio services." Currently, the Library of Congress is conducting two separate rate adjustment proceedings which will set rates and terms for transmissions made by "eligible nonsubscription services," see 63 FR 65555 (November 27, 1998); 65 FR 2194 (January 13, 2000); and Order in Docket Nos. 99-6 CARP DTRA and 2000-3 CARP DTRA2 (December 4, 2000), and those transmissions made by "pre-existing satellite digital audio radio services." 66 FR 1700 (January 9, 2001). The latter proceeding will also establish rates and terms for transmissions made during the period January 1, 2001, to December 31, 2002, by "preexisting subscription services" (the three subscription services in existence prior to the passage of the DMCA). Neither proceeding will consider rates and terms for transmissions made by "new subscription services."

For purposes of the section 114 license, "a 'new subscription service' is a service that performs sound recordings by means of noninteractive subscription digital audio

transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service." 17 U.S.C. 114(j)(8). To initiate a proceeding to establish rates and terms for those transmissions made by these services, either a copyright owner of sound recordings or a new subscription service must file a petition with the Library of Congress, requesting that the Copyright Office initiate the voluntary negotiation period for the purpose of setting these rates and terms. On January 24, 2001, Music Choice filed such a petition with the Copyright Office pursuant to section 114(f)(2)(C)(i)(I).

Section 114(f)(2)(C)(i)(I) requires the Librarian to publish a notice initiating the 6-month voluntary negotiation period no later than 30 days after the date the petition is filed. Today's notice fulfills this requirement.

Negotiation Period and Voluntary Agreements

Pursuant to section 114(f)(2)(C)(i)(I), the Librarian of Congress is announcing a six-month negotiation period to give interested parties an opportunity to negotiate a voluntary agreement that will establish statutory rates and terms for the new subscription services. If the parties reach such an agreement and submit the proposal to the Librarian for approval, it will be published for public comment. Provided that no party with a significant interest and an intent to participate in an arbitration proceeding files a comment opposing the negotiated rates and terms, the Librarian may adopt the proposed rates and terms without convening a CARP. See 37 CFR 251.63(b).

Petitions

In the absence of a license agreement negotiated under 17 U.S.C. 114(f)(2)(A), those copyright owners of sound recordings and entities availing themselves of the statutory licenses are subject to arbitration upon the

filing of a petition by a party with a significant interest in establishing reasonable terms and rates for the statutory licenses. Petitions must be filed in accordance with 17 U.S.C. 114(f)(2)(C)(ii)(I), and 803(a)(1) and may be filed anytime during the 60-day period beginning on August 13, 2001. *See also* 37 CFR 251.61. Parties should submit petitions to the Copyright Office at the address listed in this notice. The petitioner must deliver an original and five copies to the Office.

Request for Notification

In order to facilitate productive settlement discussions during the negotiation period and to facilitate complete settlement, it is useful to create a list of parties that wish to participate in the negotiation phase of the proceeding. The list should be in a centralized location and available to the public so that interested parties may identify each other and enter into the settlement discussions. Therefore, the Library is requesting that those parties wishing to participate in the six-month negotiation period file notification with the Copyright Office by March 1, 2001.

The list is solely for informational purposes and notification is on a voluntary basis. In other words, parties that wish to participate in the negotiation period are not required to file notification with the Office, though we strongly encourage each party to make the filing, and will accept such filings at any time up until the end of the six-month period. Furthermore, the notification to participate in the settlement discussion is not a Notice of Intent to Participate in a CARP proceeding, because as provided in 17 U.S.C. 114(f)(2)(B), the Library cannot begin a CARP proceeding until petitioned to do so after the end of the negotiation period. If the Library receives such a petition, it will call for [[Page 9882]] Notices of Intent to Participate at a later date.

Dated: February 7, 2001.

David O. Carson,
General Counsel.

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