



ANNOUNCEMENT

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

NOTICE WITH REQUEST FOR COMMENTS AND NOTICES OF INTENTION TO PARTICIPATE

ASCERTAINMENT OF CONTROVERSY FOR THE 1999 CABLE ROYALTY FUNDS

The following excerpt is taken from Volume 66, Number 191 of the *Federal Register* of Tuesday, October 2, 2001 (pp. 50219-50220)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. 2001-6 CARP CD 99]

Ascertainment of Controversy for the 1999 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected under the section 111 cable statutory license in 1999 to submit comments as to whether a Phase I or Phase II controversy exists as to the distribution of those fees, and a Notice of Intention to Participate in a royalty distribution proceeding.

DATES: Comments and Notices of Intention to Participate are due on October 16, 2001.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate 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 should be brought to the Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT
David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: Each year cable systems submit royalties to the Copyright Office for the retransmission to their subscribers of over-the-air broadcast

signals. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel ("CARP") to determine the distribution of the royalty fees that remain in controversy. See 17 U.S.C. chapter 8.

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 111(d)(4) of the Copyright Act, title 17 of the United States Code. See, e.g., Orders, Docket No. 2000-6 CARP CD 98 (dated October 12, 2000) and Docket No. 99-7 CARP CD 97 (dated October 18, 1999). [[Page 50220]] However, the Copyright Office must, prior to any distribution of the royalty fees, ascertain who the claimants are and the extent of any controversy over the distribution of the royalty fees.

The CARP rules provide that:

In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the *Federal Register* a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

37 CFR 251.45(a). The Copyright Office may publish this notice on its own initiative, see, e.g., 64 FR 23875 (May 4, 1999); in response to a motion from an interested party, see, e.g., 65 FR 54077 (September 6, 2000), or in response to a petition requesting that the Office

declare a controversy and initiate a CARP proceeding. In this case, the Office has received a motion for a partial distribution of the 1999 cable royalty fees.

On September 26, 2001, representatives of the Phase I claimant categories to which royalties have been allocated in prior cable distribution proceedings filed a motion with the Copyright Office for a partial distribution of the 1999 cable royalty fund. The Office will consider this motion after each interested party has been identified by filing the Notice of Intention to Participate requested herein and had an opportunity to file responses to the motion.

1. Comments on the Existence of Controversies

Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, the Copyright Office is requesting comment on the existence and extent of any controversies, at Phase I and Phase II, as to the distribution of the 1999 cable royalty fees.

In Phase I of a cable royalty distribution, royalties are distributed to certain categories of broadcast programming that has been retransmitted by cable systems. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, music programming, and Canadian programming. The Office seeks comments as to controversies between these categories for royalty distribution.

In Phase II of a cable royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a

settlement agreement.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to our attention after the close of that period.

2. Notice of Intention To Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to Participate be filed in order to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. Recently, in another proceeding, the Library has been forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. See 65 FR 54077 (September 6, 2000); see also Orders in Docket No. 2000-2 CARP CD 93-97 (June 22, 2000, and August 1, 2000). These rulings will result in a future amendment to Sec. 251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 1999 cable royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) the claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Notices of Intention to Participate are due no later than October 16, 2001. Failure to file a timely Notice of Intention to Participate may preclude a claimant or claimants from participating in a CARP proceeding.

3. Motion of Phase I Claimants for Partial Distribution

A claimant who is not a party to the mo-

tion, but who files a Notice of Intention to Participate, may file a response to the motion no later than the due date set forth in this notice for comments on the existence of controversies and the Notices of Intention to Participate. The Motion of Phase I Claimants for Partial Distribution is available for inspection and copying in the Office of the General Counsel.

Dated: September 27, 2001

David O. Carson
General Counsel

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