



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 2000 AND 2001 SATELLITE ROYALTY FUNDS

The following excerpt is taken from Volume 66, Number 210 of the *Federal Register* of Tuesday, October 30, 2001 (pp. 54789–54791)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. 2001–7 CARP SD 2000]

Ascertainment of Controversy for the 2000 and 2001 Satellite 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 119 statutory license in 2000 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. Parties who submit a Notice of Intention to Participate may submit comments on the motion for a partial distribution filed by the Public Broadcasting Service.

DATES: Comments and Notices of Intention to Participate are due by November 29, 2001. Reply comments are due by December 31, 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: Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, 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 satellite carriers submit royalties to the Copyright Office for the retransmission of over-the-air broadcast signals to their subscribers. 17 U.S.C. 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a [[Page 54790]] 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 fees, 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 119(b)(4)(C) of the Copyright Act, title 17 of the United States Code. See, e.g., Orders, Docket No. 97–1 CARP SD 92–95 (dated March 17, 1997) and Docket No. 2000–7 CARP SD 96–98 (dated February 23, 2001). Therefore, 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 56941 (September 20, 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 distribution of PBS National Satellite Feed royalty funds for 2000 and 2001.

However, before considering the merits of the motion for a partial distribution of the 2000 and 2001 satellite royalty fees, the Office must first determine who has a significant interest in participating in any proceeding concerning the distribution of these fees. Therefore, the Office is directing any claimant to 2000 satellite royalty fees collected under the section 119 statutory license to file a Notice of Intention to Participate in a royalty distribution proceeding, the purpose of which will be to consider the proper distribution of these fees. Only a party who files a Notice of Intention to Participate may submit comments on the PBS motion for a distribution of the PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001.

Parties are reminded that informal service of a pleading to any party prior to the publication of a notice in the **Federal Register** requesting Notices of Intention to Participate in a CARP proceeding is for informational purposes only. The “official service list” for any distribution or rate adjustment proceeding is compiled by the Librarian of Congress from the notices of intention filed with this office in response to the notice published in the **Federal Register**. Section 251.44 of title 37 of the Code of Federal Regulations provides that:

The Librarian of Congress shall compile and distribute to those parties who have filed a notice

of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself.

37 CFR 251.44(f) (emphasis added). Consequently, no party has been properly served in this proceeding because the official service list has yet to be created. Nevertheless, the Copyright Office will consider the oppositions already filed with the Copyright Office by SESAC, Inc.; Program Suppliers and Joint Sports, jointly; and the American Society of Composers, Authors and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”) (collectively, the “Music Claimants”) in response to the Public Broadcasting Service (“PBS”) motion. These parties may also submit supplemental filings to their oppositions up to the due date set forth in this notice. Similarly, any response to an opposition already filed with the Office will be considered a reply comment for purposes of this proceeding, provided that the submitting party has filed a timely Notice of Intention to Participate.

1. 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 Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000); see also 65 FR 54077 (September 6, 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 2000 satellite 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 November 29, 2001. Failure to file a timely Notice of Intention to Participate may preclude a claimant or claimants from participating in a CARP proceeding.

2. 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, any comments filed in response to the PBS motion must address the existence and extent of any controversies, at Phase I and Phase II, as [[Page 54791]] to the distribution of the 2000 satellite fees. For the reasons stated herein, comments on the existence and extent of controversy over the distribution of the 2001 satellite royalty fees are premature and will not be considered at this time.

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

In Phase II of a satellite 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.

3. Motion of Public Broadcasting Service for Distribution of PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001

On June 21, 2001, PBS filed a motion for distribution of PBS national satellite feed royalty fees for calendar years 2000 and 2001 and sent a copy of the motion to those entities that have participated in past satellite distribution proceedings. The Office has determined that, as a matter of law, consideration of a distribution of the 2001 satellite royalty fees is premature. A distribution of the 2001 satellite royalty fees cannot occur until those persons who are entitled to a share of the royalties have an opportunity to file their claims with the Copyright Office. Claims to the 2001 satellite royalty fees will not be filed with the Copyright Office until the month of July, 2002. See 17 U.S.C. 119(b)(4). Consequently, the Office will consider the motion only so far as it concerns the distribution of the 2000 satellite royalty fees and only after all interested parties have been identified by filing the Notices of Intention requested herein and such parties have had an opportunity to respond to the motion.

A claimant who is not a party to the motion may file a response to the motion no later than the due date set forth in this notice, provided that the respondent files a Notice of Intention to Participate in this proceeding in accordance with this notice. The PBS motion for distribution of PBS national satellite feed royalty funds for 2000–2001 is posted on the Copyright Office Web site (<http://www.loc.gov/copyright/carp/pbsmotion.pdf>) and is available for copying in the Office of the General Counsel. Additional responsive filings are also available for copying in the Office of the General Counsel.

Dated: October 17, 2001

David O. Carson
General Counsel

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