

5. This amendment is to answer a question asked during the Prospective Applicant Conference webinar on February 1, 2008. For the purposes of this SGA, youth common measures should be used for 16 and 17 year-olds and adult common measures should be used for anyone ages 18 and above.

6. This amendment is to clarify an answer given during the Prospective Applicant Conference webinar on February 1, 2008. For the purposes of this SGA, no provision for profit will be allowed.

7. A virtual Prospective Applicant Conference was held via webinar for this grant competition on February 1, 2008. The presentation slides with notes can be viewed at: <http://www.workforce3one.org/view.cfm?id=4788&info=1>.

A recorded version can be viewed at: <http://www.workforce3one.org/view.cfm?id=4795&info=1>.

Signed at Washington, DC, this 12th day of February, 2008.

**Eric Luetkenhaus,**

*Grant Officer, Employment & Training Administration.*

[FR Doc. E8-3007 Filed 2-15-08; 8:45 am]

**BILLING CODE 4510-FN-P**

### Matters To Be Considered

1. Consider and act on adoption of agenda

2. Consider and act on proposed LSC *Code of Ethics and Conduct*

3. Consider and act on whether to authorize the filing of an application to the District of Columbia for registration to undertake charitable solicitations

4. Report on the work of the Board's *Ad Hoc Committee*

5. Consider and act on other business

6. Consider and act on motion to adjourn the meeting

#### FOR FURTHER INFORMATION CONTACT:

*Contact Person for Further Information:* Patricia Batie, Manager of Board Operations, at (202) 295-1500.

*Special Needs:* Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295-1500.

February 13, 2008.

**Victor M. Fortuno,**

*Vice President, General Counsel and Corporate Secretary.*

[FR Doc. 08-758 Filed 2-13-08; 4:55 pm]

**BILLING CODE 7050-01-M**

### SUPPLEMENTARY INFORMATION:

#### Background

The Copyright Royalty Judges are required by 17 U.S.C. 803(b) and 37 CFR 351 to issue determinations of rates and terms for royalty payments due for the public performance of sound recordings in certain digital transmissions by licensees in accordance with the provisions of 17 U.S.C. 114, and the making of certain ephemeral recordings by licensees in accordance with the provisions of 17 U.S.C. 112(e).

The Copyright Royalty Judges recently issued three final determinations setting rates and terms for the public performance of a sound recording by means of a digital transmission and for the making of ephemeral recordings necessary to facilitate those transmissions pursuant to 17 U.S.C. 114 and 17 U.S.C. 112(e). On December 19, 2007 the Copyright Royalty Judges announced the rates and terms applicable to Preexisting Satellite Services, 72 FR 71795; on December 20, 2007, they announced the rates and terms applicable to New Subscription Services, 72 FR 72253; and, on January 24, 2008, they announced the rate and terms applicable to Satellite Digital Audio Radio Services. 73 FR 4080.<sup>1</sup>

Under 17 U.S.C. 802(f)(1)(D), the Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under title 17 that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall publish such a decision in the **Federal Register**, together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. The decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings.

The Register of Copyrights has deemed that the Copyright Royalty Judges' publication of Final Rulings regarding New Subscription Services ("NSS"), Preexisting Subscription

<sup>1</sup> On May 1, 2007, the Copyright Royalty Judges announced rates and terms applicable to an Eligible Nonsubscription Transmission or a Transmission made by a New Subscription Service, herein referred to as *Webcaster II*, 72 FR 24084. [Docket No. CRB 2005-1] While the 60 day time period allotted under 17 U.S.C. 802(f)(1)(D) for issuing a written review for legal error has expired with regard to *Webcaster II*, the same legal error which is addressed herein was made in *Webcaster II*.

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Board of Directors

**TIME AND DATE:** The Legal Services Corporation Board of Directors will meet on February 20, 2008, via conference call. The meeting will begin at 3 p.m., (EDT), and continue until conclusion of the Board's agenda.

**LOCATION:** 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

**STATUS OF MEETING:** Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. members of the public wishing to listen to the meeting by telephone should call 1-888-390-6586 and enter 30819 on the keypad when prompted. To enhance the quality of your listening experience, as well as that of others, and to eliminate background noises that interfere with the audio recording of the proceeding, please mute your telephone during the meeting.

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2008-2]

### Review of Copyright Royalty Judges Determination

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

**ACTION:** Notice.

**SUMMARY:** The Register of Copyrights issues the following determination concerning the Copyright Royalty Judges' decisions to include the rate for use of the section 112 license for ephemeral recordings within the rates and terms of royalty payments under section 114 for the use of sound recordings in transmissions made by New Subscription Services, Preexisting Subscription Services and Satellite Digital Audio Radio Services, and to not set a minimum fee within the section 112 license rates for the Satellite Digital Audio Radio Services.

#### FOR FURTHER INFORMATION CONTACT:

Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

Services (“PSS”) and Preexisting Satellite Digital Audio Radio Services (“SDARS”) constitute issuance of final determinations as per 802(f)(1)(D). The Register of Copyrights has reviewed these final determinations of rates and terms of royalty payments under sections 114 and 112. The Register concludes that the Copyright Royalty Judges’ resolution to include the rate for the section 112 license within the rates and terms for the section 114 license constitutes a failure to establish a discernable rate for the section 112 license and is therefore a legal error. Moreover, this legal error has serious ramifications in that the beneficiaries of the section 114 license fees are not identical to the beneficiaries of the section 112 license fees. The Register also concludes that the Copyright Royalty Judges’ failure to set a minimum fee within the section 112 license rates for SDARS is a legal error.

#### **Copyright Royalty Judges’ Determination Setting Rates and Terms for New Subscription Services**

On October 31, 2005, pursuant to section 114(f)(2)(C), XM Satellite Radio, Inc. (“XM”) filed a Petition to Initiate and Schedule Proceeding for a NSS with the Copyright Royalty Judges. Pursuant to 17 U.S.C. 804(b)(3)(C)(ii), the Copyright Royalty Judges published a notice in the **Federal Register** on December 5, 2005, announcing commencement of the proceeding to set rates and terms for royalty payments under sections 114 and 112 for the activities of the new subscription service described in the XM Petition and requesting interested parties to submit their Petitions to Participate. 70 FR 72471. Petitions to participate were received from Sirius Satellite Radio, Inc. (“Sirius”), XM, MTV Networks (“MTV”), and SoundExchange, Inc.

Subsequent to the presentation of the direct phase of their cases and the filing of their written rebuttal statements, but prior to the oral presentation of their rebuttal witnesses, the parties informed the Copyright Royalty Judges that they had “reached full agreement on all issues in this litigation” and that “there are no more issues to try.” Docket No. CRB 2005–5, *Transcript of September 10, 2007*, at p. 5. They stated that the settlement agreement would be submitted to the Copyright Royalty Judges for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A). *Id.* at 6. The proposed rates and terms codifying the settlement agreement were filed on October 30, 2007.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by “some or all of the participants in a

proceeding at any time during the proceeding” provided they are submitted to the Copyright Royalty Judges for approval. 17 U.S.C. 801(b)(7)(A). Accordingly, on November 9, 2007, the Copyright Royalty Judges published a Notice of Proposed Rulemaking (“NPRM”) requesting comment on the proposed rates and terms submitted to the Judges. 72 FR 63532. Comments were due by December 10, 2007. In response to the NPRM, the Copyright Royalty Judges received only one comment, which was submitted by SoundExchange, supporting the adoption of the proposed regulations.

The Copyright Royalty Judges received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings. Therefore, on December 20, 2007, they adopted final regulations which set the rates and terms for the use of sound recordings in transmissions made by NSS and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing from the inception of the NSS through December 31, 2010.

The Copyright Royalty Judges’ rates, which included a non-refundable annual minimum fee, allocated a single calculation and payment for both the public performance of sound recordings by eligible digital transmissions made by a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112 to facilitate such transmissions. They did not set a separate discernible rate for the section 112 license.

#### **Copyright Royalty Judges’ Determination Setting Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services**

On January 9, 2006, the Copyright Royalty Judges commenced a proceeding to set rates and terms for PSS and SDARS with a request for petitions to participate. 71 FR 1455. Seven parties filed petitions to participate in this proceeding: SoundExchange, Music Choice, Muzak LLC, XM, Sirius, Royalty Logic, Inc., and THP Capstar Acquisition d/b/a DMX Music. Prior to the beginning of formal hearings, the Copyright Royalty Judges referred a novel material question of substantive law regarding the universe of preexisting subscription services to the Register of Copyrights.

On October 20, 2006, the Register of Copyrights transmitted her determination on this issue to the Copyright Royalty Judges. Subsequently,

DMX withdrew from the proceeding on October 20, 2006, and Sirius participated in the proceeding solely as a SDARS rather than as both a PSS and a SDARS. Royalty Logic, Inc. also withdrew from the proceeding on November 21, 2006, and the Copyright Royalty Judges dismissed Muzak from the proceedings on January 7, 2007.

Music Choice, as a PSS, reached a settlement with SoundExchange. Their settlement was submitted to the Copyright Royalty Judges and published for comment on October 31, 2006. 72 FR 61585. No objections were received from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings. On December 19, 2007, the Copyright Royalty Judges adopted final regulations which set the rates and terms for PSS under sections 114 and 112 for the license period 2008–2012. The rates, which included a non-refundable annual advance payment (i.e. a minimum fee), allocated a single calculation and payment method for both the public performance of sound recordings by eligible digital transmissions made pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112 to facilitate such transmissions. The adopted settlement did not set a separate discernible rate for the section 112 license. 72 FR 71795.

In light of Music Choice’s settlement, the only potential licensees remaining in the proceeding were the SDARS: XM and Sirius. Hereafter the proceeding was referred to as the SDARS proceeding. The remaining parties entered into negotiations to set rates and terms for use of the section 114 and section 112 statutory licenses but they were unable to reach an agreement. Consequently, the Copyright Royalty Judges proceeded with hearings to determine the rates and terms that would apply to SDARS.

The standards the Copyright Royalty Judges are to apply in setting the rates and terms for SDARS (as well as for PSS) differ between the 114 and 112 licenses. Section 114(f)(1) requires the Copyright Royalty Judges to establish rates and terms for the transmission of the sound recordings that are reasonable and that are calculated to achieve four specific policy objectives set forth in section 801(b)(1) of the copyright law. 17 U.S.C. 114(f)(1), 17 U.S.C. 801(b)(1). On the other hand, section 112(e), governing the reproductions made to facilitate the transmissions licensed under section 114, requires the Copyright Royalty Judges to set rates and terms that most clearly represent those “that would have been negotiated

in the marketplace between a willing buyer and a willing seller,” and to take into account certain factors when making this determination. 17 U.S.C. 112(e)(4). Additionally, the section 112 license requires that “such rates shall include a minimum fee for each type of service offered.” 17 U.S.C. 112(e)(4).

After considering the evidence in this proceeding and the applicable law, the Copyright Royalty Judges announced their final determination setting rates and terms for SDARS on January 24, 2008, stating that the “appropriate section 114 performance license rate is 6.0% of gross revenues for 2007 and 2008, 6.5% for 2009, 7.0% for 2010, 7.5% for 2011 and 8.0% for 2012 and, further, that the appropriate section 112 reproduction license rate is deemed to be embodied in the section 114 license rate.” 73 FR at 4084. However, the Copyright Royalty Judges did not determine a separate rate for the section 112 license or determine what portion of the Section 114 license fee, if any, should be deemed to be attributable to the section 112 license. In other words, they did not set a discernible rate for section 112. Additionally, the Copyright Royalty Judges did not set a minimum fee for the SDARS section 112 license.

#### Review of Copyright Royalty Judges’ Determinations

In accordance with the authority granted to the Register of Copyrights under 17 U.S.C. 802(f)(1)(D), the Register of Copyrights has reviewed for legal error the determinations of the Copyright Royalty Judges setting rates and terms for use of the sections 112 and 114 statutory licenses by NSS, PSS, and SDARS. The Register concludes that the Copyright Royalty Judges did not determine rates for the section 114 and 112 licenses and that this resolution constitutes an error on a material question of substantive law under title 17 in each of the above-referenced determinations. Further, the Register concludes that the Copyright Royalty Judges’ determination of rates for SDARS did not include a minimum fee for the section 112 license and that this resolution was also in material error.

It is not that the Copyright Royalty Judges failed to recognize the need to set a rate for the section 112 license or include a minimum fee. The January 24, 2007 Order acknowledges the Copyright Royalty Judges’ responsibility to set these rates for the section 112 license. 73 FR at 4084 and 4098. Even so, the Copyright Royalty Judges chose not to set a specific rate for the section 112 license, citing the paucity of evidence in the record for the SDARS proceeding that could be used to determine the

value of the license. In that case, the Copyright Royalty Judges were presented with two proposals. According to the final order, SoundExchange suggested “combining the Section 112 and 114 rates over the license period by allocating 8.8% of the combined fee owed by the SDARS towards the 112 charge.” 73 FR at 4098. The SDARS agreed in principle but they suggested that the section 112 license has no separate value. However, the Copyright Royalty Judges rejected both proposals, finding that neither proposal was supported by record evidence. *Id*

The Copyright Royalty Judges declined to accept that 8.8% of the rate for the performance of the sound recording represents the valuation of the right to make reproductions of the sound recordings under the section 112 license. Instead, they concluded that “SoundExchange’s valuation of 8.8% is nothing more than an effort to preserve a belief that the section 112 license has some value by perpetuating the number adopted in the first webcasting proceeding.” *Id* The Copyright Royalty Judges then characterized the section 112 license as “an add-on to the securing of the performance rights granted by the Section 114 license,” and determined that the rate for the section 112 license rate is embodied in the rate for the section 114 license, just as they did in *Webcaster II*.<sup>2</sup> *Id*. However, the Copyright Royalty Judges did not identify any particular percentage of the section 114 license fee as representing the value of the section 112 license.

There is also sparse evidence or analysis regarding the decision to include rates for the section 112 license within the rates and terms for the section 114 license in either the December 19, 2007 Final Rule for PSS or the December 20, 2007 Final Rule for NSS, since both determinations were the result of negotiated settlements. Settlements, however, are not accepted in a vacuum. Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by “some or all the participants in a proceeding at any time during the proceeding” provided they are submitted to the Copyright Royalty Judges for approval. 17 U.S.C. 801(b)(7)(A). The Copyright Royalty Judges have the authority to accept or reject the settlement and it is then subject to review by the Register. 17 U.S.C. 802(f)(1)(D). In fact, in their October 31, 2007 NPRM announcing

negotiated rates and terms for PSS, the Copyright Royalty Judges exercised their authority to accept or reject the proposed settlement by including two modifications to the negotiated proposal before publishing it for comment. 72 FR 61586.

The negotiated settlements establishing rates and terms for both PSS and NSS, and their approval by the Copyright Royalty Judges, followed the previous conclusion in *Webcaster II* regarding inclusion of the section 112 license within the section 114 license as a single rate. Thus, the *Webcaster II* conclusion on this matter likely underlies the parties’ settlement just as it did the January 24, 2007 Order for the SDARS. Therefore, the Register reviews the analysis and resolution on this matter as contained in *Webcaster II*.

In *Webcaster II*, the Copyright Royalty Judges rejected the proposal put forward by SoundExchange and agreed to by the Digital Media Association, which sought to carry forward the combination of sections 112 and 114 rates from the prior license period. This proposal included the “deeming” of 8.8% of the total fee owed by Services as constituting the section 112 charge. 72 FR 24101. The Copyright Royalty Judges declined to ascribe any particular percentage of the section 114 royalty as representative of the value of the section 112 license.

The Copyright Royalty Judges made this decision based on the view that “SoundExchange’s evaluation of 8.8% is not a rate.” *Id* Additionally, they noted that “the paucity of the record prevents us from determining that 8.8% of the section 114 royalties is either the value of or the rate for the section 112 license” and that “the record demonstrates that \* \* \* copyright owners and performers are unable to secure separate fees for the section 112 license.” 72 FR 24101–24102.

The Register observes that the parties’ failure to provide sufficient evidence to set a rate does not dispatch the Copyright Royalty Judges’ statutory obligations. The Register notes that Congress allows the Copyright Royalty Judges to consider a broad array of information in determining the separate rates for the section 112 license that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In making these determinations, the Copyright Royalty Judges are to consider economic, competitive, and programming information presented by the parties, and they may consider voluntary license agreements negotiated under section 112. 17 U.S.C. 112(e)(4). Furthermore,

<sup>2</sup> In *Webcaster II* the Copyright Royalty Judges, for the first time, announced rates and terms of royalty payments under sections 114 and 112 for the use of sound recordings in transmissions. 72 FR 24084. [Docket No. CRB 2005–1]

the Copyright Royalty Judges have been granted subpoena powers to compel participants or witnesses to appear and give testimony. See 17 U.S.C. 803(b)(6)(C)(ix).

Moreover, there is a practical reason for making this determination. The requirement in section 112(e)(4) to determine rates is logical in that the two licenses involve different rights. The section 112 statutory license applies to reproductions, while the section 114 statutory license applies to public performances. Moreover, the beneficiaries of the section 114 license are not identical to the beneficiaries of the section 112 license. Royalties collected under section 114 are paid to the performers and the copyright owners of the sound recordings, i.e., usually the record companies; whereas, the royalties collected pursuant to the section 112 license are not paid to performers. Without separate rates for both the section 114 and 112 licenses, SoundExchange is unable to allocate properly the funds it collects as the Designated Agent and fulfill both its responsibility to distribute receipts to stakeholders of the public performance right under section 114(g) as well as its responsibility to distribute receipts to separate stakeholders of the reproduction right under section 112.

Consequently, the Register finds that the Copyright Royalty Judges' resolution to include rates for the section 112 license within rates and terms for the section 114, without specifying what percentage, if any, is attributable to the section 112 license, does not fulfill the Copyright Royalty Judges' responsibility to determine the value of the section 112 license for ephemeral copies. Both the text and the legislative history of section 112 indicate Congress' view that the rate setting body must determine the value of the section 112 license. See 17 U.S.C. 112(e)(3) (requiring reasonable rates and terms of royalty payments for the activities specified by paragraph (1) which shall include a minimum fee for each type of service offered by transmitting organizations); DMCA Conf. Rpt., 105-796, at 89-91; DMCA Section-by-Section Analysis at 52-53, 61-62.

### Conclusion

Having reviewed the resolution by the Copyright Royalty Judges for legal error, the Register of Copyrights hereby concludes that in setting rates for the section 112 and 114 statutory licenses, the Copyright Royalty Judges must establish separate values for each of the two licenses and that rates for the section 112 license shall include a

minimum fee.<sup>3</sup> Pursuant to the requirements established in 802(f)(1)(D), the Register issues this written decision not later than 60 days after the dates on which the final determinations by the Copyright Judges were issued. This decision shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings.

Dated: February 14, 2008.

**Marybeth Peters,**

*Register of Copyrights.*

[FR Doc. E8-3149 Filed 2-15-08; 8:45 am]

**BILLING CODE 1410-30-P**

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## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Agency Meeting

**TIME AND DATE:** 10: a.m., Thursday, February 21, 2008.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** 1. Quarterly Insurance Fund Report.

2. *Final Rule:* Part 797 of NCUA's Rules and Regulations, Procedures for Debt Collection.

**FOR FURTHER INFORMATION CONTACT:**

Mary Rupp, Secretary of the Board, Telephone: 703-518-6304.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 08-770 Filed 2-14-08; 2:39 pm]

**BILLING CODE 7535-01-M**

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## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:**

Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the

Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 4, 2008.

*Time:* 9 a.m. to 5 p.m.

*Room:* 415.

*Program:* This meeting will review applications for Stabilization 3 in Preservation and Access Grants for Stabilizing Humanities Collections, submitted to the Division of Preservation and Access, at the October 1, 2007 deadline.

2. *Date:* March 6, 2008.

*Time:* 9 a.m. to 5 p.m.

*Room:* 415.

*Program:* This meeting will review applications for Stabilization 4 in Preservation and Access Grants for Stabilizing Humanities Collections, submitted to the Division of Preservation and Access, at the October 1, 2007 deadline.

3. *Date:* March 13, 2008.

*Time:* 9 a.m. to 5 p.m.

*Room:* 415.

*Program:* This meeting will review applications for National Digital Newspaper Program (NDNP) in National Digital Newspaper Program, submitted to the Division of Preservation and Access, at the November 1, 2007 deadline.

4. *Date:* March 13, 2008.

*Time:* 9 a.m. to 5 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Digital Humanities

<sup>3</sup> The Register, however, takes no position on what the value of the minimum fee should be, or whether it could be a fee of zero.