

Dated: January 27, 2004.

**Emily Stover DeRocco,**

*Assistant Secretary, Employment and Training Administrator.*

[FR Doc. 04-2123 Filed 2-2-04; 8:45 am]

**BILLING CODE 4510-30-M**

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2004-1 CARP DTRA4]

### Digital Performance Right in Sound Recordings and Ephemeral Recordings

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

**ACTION:** Initiation of voluntary negotiation period.

**SUMMARY:** The Copyright Office is announcing the initiation of a voluntary negotiation period for determining reasonable rates and terms for two compulsory licenses which, in one case, provides for a public performance of a sound recording by a new subscription service, and in the second instance, allows for the making of an ephemeral phonorecord of a sound recording in furtherance of making the permitted public performance. The rates and terms will be for the period beginning January 1, 2005 and ending on December 31, 2006.

**EFFECTIVE DATE:** The voluntary negotiation period begins on February 3, 2004.

**ADDRESSES:** Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered by a commercial, non-government courier or messenger, they must be delivered to: The Congressional Courier Acceptance Site, located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. If hand delivered by a party, copies of voluntary license agreements and petitions should be addressed to Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, First and Independence Avenue, SE., Washington, DC 20559-6000, and delivered to the Public Information Office of the Copyright Office in Room LM-401 between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** On January 6, 2004, the Office announced the voluntary negotiation period for adjusting rates and terms for the statutory licenses which provide for the public performance of a sound recording by means of a digital audio transmission, 17 U.S.C. 114, and the making of related ephemeral recordings, 17 U.S.C. 112(e), for the two-year license period beginning January 1, 2005. See 69 FR 689 (January 6, 2004). That notice specifically noted that the negotiations were for establishing rates and terms applicable to eligible nonsubscription transmissions and the related ephemeral recordings. However, the notice should also have stated that the negotiation process and any subsequent proceedings before a copyright arbitration royalty panel are to include the rates and terms applicable to a new subscription service for the same time period.

For purposes of the section 114 and the section 112 licenses, an "eligible nonsubscription transmission" and a "new subscription service" are defined in the following way. An "eligible nonsubscription transmission" is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. A "new subscription service," on the other hand, is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions. A "new subscription service" is not to be confused with the three preexisting subscription services, Music Choice, DMX Music, Inc., and Muzak, L.P., or the two preexisting satellite digital audio radio services, XM Satellite Radio, Inc. and Sirius Satellite Radio, Inc. See 17 U.S.C. 114(j)(6) and (8). Rates and terms applicable to these particular services for use of the section 112 and section 114 licenses are adjusted every five years under a different standard. See 17 U.S.C. 114(f)(1) and 68 FR 39873 (July 3, 2003).

Because the procedures and standards for setting the statutory rates and terms applicable to eligible nonsubscription transmissions are the same as the standards for transmissions made by new subscription services, rates and terms for the public performance of a sound recording and the making of the

necessary ephemeral phonorecords for both transmission categories will be considered together in a single proceeding, just as they were during the initial rate setting proceeding. See 68 FR 27596 (May 20, 2003). Consequently, the rate setting process initiated with the publication of the January 6 notice shall consider both eligible nonsubscription transmissions and transmissions made by new subscription services.

Dated: January 28, 2004.

**David Carson,**

*General Counsel.*

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that two teleconference meetings of the Leadership Initiatives Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

*Arts Education:* February 12, 2004, from 3 p.m. to 5 p.m. from Room 703. This meeting will be closed.

*International:* February 12, 2004, from 1 p.m. to 1:30 p.m. from Room 709. This meeting will be closed.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5691.

Dated: January 29, 2004.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

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