

**LIBRARY OF CONGRESS****Copyright Office****37 CFR Parts 252 and 257****[Docket No. 2003—1 CARP]****Filing of Claims for Cable and Satellite Royalties****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Waiver of regulation.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the cable and satellite royalty funds for the year 2002, to avoid potential problems with mail delivery. Claimants are strongly encouraged to file their cable and satellite claims electronically, utilizing the special procedures described in this document to ensure that their claims are timely received.

**EFFECTIVE DATE:** May 30, 2003.

**ADDRESSES:** If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540 from July 1, 2003 through July 31, 2003. Online submissions should be made to the following: for cable claims "<http://www.copyright.gov/carp/cable/claims.html>"; for satellite claims "<http://www.copyright.gov/carp/satellite/claims.html>". See **SUPPLEMENTARY INFORMATION** for information about on-line electronic filing through the Copyright Office website. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Tanya Sandros, Senior Attorney or Susan Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:****Background**

**Section 111** of the Copyright Act, 17 U.S.C., places a statutory obligation on cable systems who retransmit over-the-air broadcast signals to submit royalty fees to the Copyright Office for such retransmissions. Distribution of the royalty fees is made to copyright owners whose works were embodied in those retransmissions made by cable systems. 17 U.S.C. 111(d)(3). In order to claim eligibility for a distribution of cable royalty fees, a claimant must submit to the Copyright Office a claim during the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 111(d)(4)(A). The regulations governing the content and submission of cable claims are found at **37 CFR part 252**.

Likewise, copyright owners whose works were embodied in over-the-air television broadcast signals retransmitted by satellite carriers may seek a distribution of the satellite royalty fees collected by the Copyright Office. **17 U.S.C. 119**. Eligibility for satellite royalty fees is predicated upon the submission of a claim in the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 119(b)(4)(A). The regulations governing the content and submission of satellite claims are found at **37 CFR part 257**.

For both cable and satellite, a claim is considered timely filed with the Copyright Office if it is hand delivered to the correct office within the Copyright Office during the month of July, or if it is mailed to the correct address and it bears a July U.S. Postal Service postmark. See 37 CFR 252.4 (cable); 37 CFR 257.4 (satellite). The regulations do not provide for the filing of cable and satellite claims by alternative methods such as electronic submission.

Unfortunately, the Office has experienced disruptions of postal service since October 17, 2001. See **66 FR 62942** (December 4, 2001) and **66 FR 63267** (December 5, 2001). While mail delivery to the Office has resumed, the Office continues to experience delays in receipt of its mail, due in part to the diversion of mail to an off-site location for screening. Consequently, last year the office offered and recommended alternative methods for the filing of cable and satellite claims to the 2001 royalty funds. See **67 FR 21176** (April 30, 2002). The Office is offering and recommending the same alternative filing methods this year for claims to the 2002 royalty funds.

Moreover, claimants are strongly advised to send their claims early in the

month of July. Persons submitting claims at the end of the month risk missing the deadline for submission of claims.

Claimants are further advised that this Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR parts 252 (cable) and 257 (satellite).

**Acceptable Methods of Filing Cable and Satellite Claims for the Year 2002**

Claims to the 2002 cable and satellite royalty funds may be submitted as follows:

*a. Hand Delivery*

In order to best ensure the timely receipt by the Copyright Office of their cable and satellite claims, the Office encourages claimants who do not file their claims electronically to deliver their claims personally by 5 p.m. E.S.T. on any business day, during the month of July, 2003, and no later than July 31, 2003, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers may be subject to screening at an off-site facility before being delivered to the Office and may be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on July 31, 2003. Thus, claims should be hand delivered by the claimant or a representative of the claimant (*i.e.*, the claimant's attorney or a member of the attorney's staff) directly to the Office of the General Counsel.

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

*b. On-line Submission*

The Office has devised on-line electronic forms for filing both single and joint cable and satellite claims from July 1, 2003 through July 31, 2003. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms electronically as provided in the instructions accompanying the forms. Cable forms will be posted on the Office Web site at "<http://www.copyright.gov/carp/cable/claims.html>". Satellite forms will be posted at "<http://www.copyright.gov/carp/satellite/claims.html>". Claimants filing a joint claim may list each of their joint claimants directly on the Office's on-

line joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document (“PDF”) format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or (in the case of text-only files) in ASCII text. There will be an “attach” button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the names and addresses of the joint claimants. See 37 CFR 252.3(b)(1) and 257.3(b)(1).

The cable and satellite forms will be available for use during the month of July. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed on-line must be received by the Office no later than 11:59 p.m. E.S.T. on July 31, 2003. Specifically, the completed electronic forms must be received by the Office’s server by that time. Any claim received after that time will be considered as untimely filed. Claimants who file electronically will receive an electronic mail message in response, stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims on-line are strongly encouraged to send their claim no later than July 30, 2003, in order to better ensure timely receipt by the Office.

When filing claims on-line, all provisions set forth in 37 CFR part 252 and 257 apply except §§ 252.3(b)(5) and 257.3(b)(5), which require the original signature of the claimant or of the claimant’s duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

#### *c. By Mail*

Sections 252.4(a)(2) and 257.4(a)(2) direct claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail

receipt in order to secure the only acceptable proof of a timely filing. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the month of July, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date. 37 CFR 252.4(e) and 257.4(e). Claimants whose claims were received after July 31, with only a business meter mark, and who have been unable to produce the certified mail receipt, have had their claims rejected as untimely.

As noted above, disruption of the mail service and delivery of incoming mail to an off-site screening center have reduced the timeliness of receipt of mail by the Copyright Office. Such delays may hamper the Office’s ability to compile a claimant list, and may affect the Office’s ability to make partial distributions of cable and satellite funds not in controversy.<sup>1</sup> Consequently, the Office suggests that claimants use the mail only if none of the other methods outlined above are feasible. Claims sent by mail should be addressed in accordance with §§ 252.4(a)(2) and 257.4(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after July 31, 2003, will be rejected as being untimely filed. Claimants who have ignored this rule have had their claims rejected.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 252 for cable claims and part 257 for satellite claims.

#### **Faxes Not Permitted**

Although the Copyright Office permitted the submission of 2002 Digital Audio Recording Technology (“DART”) claims via facsimile transmission, the Office has determined that, due to the high volume of cable and satellite claims received by the Office relative to DART claims, it is impractical to permit the faxing of cable and satellite claims. Consequently, any cable or satellite claims received by the Copyright Office via facsimile transmission will not be accepted.

<sup>1</sup> The Office also notes that some of the mail it has received has been damaged due to the decontamination process. Damage or destruction of claims sent by mail could adversely affect a claimant’s eligibility for cable or satellite royalties.

#### **Waiver of Regulation**

The regulations governing the filing of cable and satellite claims require “the original signature of the claimant or of a duly authorized representative of the claimant.” § 252.3(b) (cable); § 257.3(b) (satellite). This Notice, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2002 cable and satellite royalty funds. The Office is not waiving the statutory deadline for filing either cable or satellite claims, a deadline the Office has no power to waive. See, *United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by July 31, 2003.

Waiver of an agency’s rules is “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.” *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continued problems with the delivery of the mail constitutes a special circumstance which has forced the Office to deviate from its usual mail processing procedures. Thus, given such uncertainties, the Office believes that the public interest will best be served by waiving, for this filing period only, the requirement that cable and satellite claims bear the original signature of the claimant or of a duly authorized representative of the claimant when, and only when, such claim is filed electronically.

Dated: May 23, 2003.

**David O. Carson,**  
*General Counsel.*

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