



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

## NOTICE OF CONSOLIDATION OF PROCEEDINGS, REQUEST FOR NOTICES OF INTENT TO PARTICIPATE, AND PRECONTROVERSY DISCOVERY SCHEDULE

### DISTRIBUTION OF 1990, 1991 AND 1992 CABLE ROYALTY FUNDS

The following excerpt is taken from Volume 60, Number 54 of the Federal Register for Tuesday, March 21, 1995 (pp. 14971-14976)

---

#### LIBRARY OF CONGRESS

##### Copyright Office

[Docket No. 93-3 CARP-CD90-92]

##### Distribution of 1990, 1991 and 1992 Cable Royalty Funds

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

**ACTION:** Notice of consolidation of proceedings, request for notices of intent to participate, and precontroversy discovery schedule.

**SUMMARY:** The Copyright Office of the Library of Congress is consolidating the distribution of the 1990, 1991 and 1992 cable royalty funds into a single proceeding. Accordingly, the Office is requesting that claimants to the 1991 and 1992 royalty funds file a Notice of Intent to Participate in the distribution proceeding for those funds, if they have not already done so. The Office is also setting the prehearing schedule for the 1990-1992 distribution proceeding, including the date on which controversies will be declared and arbitration initiated.

**DATE:** Notices of Intent to Participate are due April 5, 1995.

**ADDRESSES:** If sent by mail, an original and five copies of the Notice of Intent 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 of the Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room

407, First and Independence Avenue, S.E. Washington, DC 20540.

**FOR FURTHER INFORMATION CONTACT:** William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington DC 20024. Telephone (202) 707-8380. Telefax: (202) 707-8366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Each year, cable systems submit royalties to the U.S. Copyright Office for a statutory license to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed to the appropriate copyright owners by means of a cable royalty distribution proceeding. These proceedings were formerly conducted by the Copyright Royalty Tribunal. However, on December 17, 1993, the Tribunal was abolished. Royalty distribution proceedings are now conducted by ad hoc copyright arbitration royalty panels (CARPs) convened and supported by the Library of Congress and the Copyright Office. Copyright Royalty Tribunal Reform Act of 1993, P.L. 103-198, 107 Stat. 2304 (1993).

At the time Congress was considering the abolition of the Tribunal, the Tribunal had already begun a proceeding to distribute the cable royalties that were collected in 1990. The 1990 cable royalty distribution proceedings began on April 2, 1993. 58 FR 17387 (April 2, 1993). The proceeding did not, however, reach a conclusion. In light of the imminent passage of the Copyright Royalty Tribunal Reform Act, the Tribunal suspended the 1990 cable royalty distribution proceeding. Order, CRT Docket No. 92-1-90CD (October 14, 1993).

The Copyright Royalty Tribunal Reform Act, which was effective immediately upon enactment, directed the Librarian and the Copyright Office to adopt the rules and regulations of the Tribunal found in 37 CFR chapter 3, 17 U.S.C. 802(d), and provided that the Tribunal's regulations were to remain in effect until the Librarian adopts "supplemental or superseding regulations." The Office adopted the Tribunal's rules and regulations on an interim basis on December 22, 1993, and notified the public that it intended to begin a rulemaking proceeding to revise and update those rules. 58 FR 67690 (December 22, 1993). In one of the first decisions in that rulemaking, we considered the question of how to handle proceedings that were suspended because of the abolition of the Tribunal. The Office determined that matters left pending at the Tribunal would not be taken up where they had been left off, but would have to be begun anew. 59 FR 2550 (January 18, 1994). The 1990 cable distribution would, therefore, start over from the beginning.

We met with the cable copyright claimants on August 11, 1994 and were informed that they preferred to restart the 1990 cable distribution proceeding only after final regulations for the CARPs were adopted and in place. The Office honored this request and, on December 7, 1994, published final regulations governing the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993. 59 FR 63025 (December 7, 1994).

Cable royalties for the 1990, 1991, 1992 and 1993 account years are now eligible for distribution proceedings. A partial distribution of ninety percent of the 1990 and 1991 royalties was made by the

Tribunal prior to its termination, and the Copyright Office has made a partial distribution of eighty percent of the 1992 and 1993 royalty funds. *See*, Distribution Order, CRT Docket No. 92-1-90CD, 57 FR 41478 (September 10, 1992)(1990 royalties); Distribution Order, CRT Docket No. 93-4-91CD (October 6, 1993)(1991 royalties); Order, Docket Nos. 94 CARP (92-CD) and 94 CARP (93-CD) (September 26, 1994)(1992 and 1993 royalties).

## II. Request for Comments on Controversy

On December 15, 1994, the Copyright Office of the Library of Congress published a notice seeking comment as to the existence of controversies among claimants to the 1990 cable royalty fund. 59 FR 64714 (December 15, 1994). We also requested interested claimants to file a Notice of Intent to Participate in the 1990 cable distribution proceeding.

In addition to seeking comments regarding 1990 royalty fund controversies, we solicited comments as to whether the distribution of 1990 cable royalties should be consolidated with other cable royalty funds collected in subsequent years. 59 FR 64715 (1994). The 1991, 1992 and 1993 royalty funds are ready for distribution and could be made a part of the 1990 proceeding, if that would serve the public interest. If the claimants favored a consolidation, we sought comment as to the existence of controversies in those subsequent years. We also stated that if we did consolidate the 1990 cable distribution with one or more subsequent years, we would issue a request at that time for Notices of Intent to Participate for those subsequent years. 59 FR 64715.

### The Comments

The Office received comments from the following claimant groups: Program Suppliers, Joint Sports Claimants (consisting of the Office of the Commissioner of Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association), National Association of Broadcasters (NAB), Canadian Claimants, Devotional Claimants, Music Claimants (consisting of the American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; and SESAC, Inc.), The Public Broadcasting Service (PBS), National Public Radio (NPR) and Multimedia Entertainment, Inc. (Multimedia). In addition to individual comments from these groups, the Office received a comment, styled "Joint Comments of Copyright Owners" (Copyright Owners), that expresses the collective opinion of all of the above listed claimant groups.

### Discussion of the Comments

The Copyright Owners identify

existence of both Phase I and Phase II controversies for the 1990 cable distribution, and identify the existence of a Phase I controversy for the 1991 and 1992 royalty funds. They request a consolidation of the 1991 and 1992 distribution with the 1990 proceeding, and propose a detailed schedule for the 45-day precontroversy discovery period. The Copyright Owners are not, however, in agreement as to when the precontroversy discovery period, and the initiation of arbitration, should begin.

#### A. Existence of Controversies.

Copyright Owners state that a controversy exists as to the Phase I allocation of the 1990 cable royalty fund. Copyright Owners, comments at 1-2. The Phase I parties agreed to settle the 1990 royalty claims of NPR, the Canadian Claimants and the Music Claimants. These settlements were approved by the Copyright Royalty Tribunal during the aborted 1990 cable distribution proceeding; therefore, no controversy exists with respect to the shares of the 1990 cable royalty fund for NPR, Canadian Claimants, and Music Claimants. *See* in CRT Docket No. 92-1-90CD: "Distribution Order" (dated March 29, 1993) (NPR); "Distribution Order" (dated July 27, 1993) (Canadian Claimants); and "Order" (dated August 16, 1993) (Music Claimants).

Copyright Owners also identify the existence of a controversy for the Phase I allocation of the 1991 and the 1992 cable royalties. *Id.* at 2. Although there is a possibility that some of the claimants will reach a Phase I settlement, hearings before a CARP will nevertheless be required. *Id.*

With respect to Phase II controversies, Copyright Owners ask that the Copyright Office schedule them after resolution of all Phase I controversies, and then conduct all Phase II proceedings concurrently. *Id.* at 3. Music Claimants urge that a separate CARP panel be convened to conduct each Phase II hearing. Music Claimants, comments at 7.

Multimedia and NAB report the existence of Phase II controversies for the 1990 cable fund. Multimedia, comments at 1; NAB, comments at 1-2. Several other commentators, including Program Supplier and Joint Sports Claimants, report that they are currently unaware of any Phase II controversies for the 1990 fund, but reserve the right to participate in such controversies should they arise. *See* Program Suppliers, comments at 1-2; Joint Sports Claimants, comments at 2. *See also* Canadian Claimants, comments at 2; Music Claimants, comments at 3-4; Devotional Claimants, comments at 1. None of the commentators are aware of any Phase II controversies at this time for the 1991 and 1992 cable royalty funds; however, they express an intention to

participate in any Phase II controversies should they arise. *See e.g.* Program Suppliers, comments at 2; Music Claimants, comments at 5-6; Devotional Claimants, comments at 1.

#### B. Consolidation of Proceedings.

Copyright Owners request that the 1990, 1991, and 1992 distribution proceedings be consolidated into a single proceeding. Copyright Owners, comments at 2. They state that consolidation is necessary to reduce the existing backlog in distribution proceedings, created by the elimination of the Copyright Royalty Tribunal, and that a proceeding which covers no more than three years would be manageable and cost effective for the parties and the CARP. *Id.* Copyright Owners do not, however, express any opinion as to the advisability of consolidating subsequent royalty funds (1993, 1994, etc.) into a single proceeding. *Id.* at 2-3.

NAB supports consolidation of the 1990, 1991, and 1992 cable funds into a single proceeding, but only if the procedural dates and schedule proposed by Joint Sports Claimants is followed. *See* discussion, *infra*.

C. Prehearing Schedule. Copyright Owners urge the Copyright Office to adopt a detailed prehearing scheduling order which addresses the following matters.

1. Scheduling of proceeding. Section 251.45(b)(1) prescribes a 45-day precontroversy discovery period for the handling of discovery and pre-arbitration matters. Copyright Owners propose that the Copyright Office adopt specific deadlines for the following procedural steps to take place within those 45 days:

- Exchange of Written Direct Cases
- Requests for Underlying Documents
- Related to Written Direct Cases
- Responses to Requests for Underlying Documents
- Completion of Document Production
- Follow-up Requests for Underlying Documents
- Responses to Follow-up Requests
- Motions Related to Document Production to Date
- Production of Documents In Response to Follow-Up Requests
- All Other Motions, Petitions and Objections

Copyright Owners, comments at 4. In addition, Program Suppliers urge that parties should be free to file motions, particularly on discovery disputes, at any time up to the established deadline. The Librarian could then address each motion on an ad hoc basis, thereby expediting the decisionmaking process. Program Suppliers, comments at 4.

2. Nature and scope of precontroversy discovery. Copyright Owners note that the rules describe the nature and scope of

discovery permitted by a CARP, §251.45(c), but do not articulate any standard for precontroversy discovery. They therefore recommend that the same standard in §251.45(c) apply to the precontroversy discovery period, which should allow the parties to "request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony." Copyright Owners, comments at 5.

3. Discovery and motions before the CARP. Copyright Owners voice concern that §251.45(c) requires the CARP to establish a discovery period following the submission of rebuttal and direct cases. They believe that allowing additional discovery on direct cases would be counterproductive to the purpose of the precontroversy discovery period, and that a CARP should only allow additional direct case discovery upon a showing of good cause. Copyright Owners, comments at 5-6. Thus, all discovery requests that can be made during the precontroversy discovery period, and all motions and objections contemplated by §251.45(b), must be made at that time. *Id.*

4. Manner of service. Because of what they view as a limited precontroversy discovery period, Copyright Owners recommend that service of all discovery requests and responses to such requests be by hand or fax on the party to whom the request or response is directed.

Otherwise, they propose that all motions and responses filed during the precontroversy discovery period be served by means no slower than overnight express mail. Copyright Owners, comments at 6.

5. Start of evidentiary hearings. Copyright Owners request that a "sufficient" time period be allowed from issuance of all precontroversy discovery rulings by the Copyright Office and the start of the 180-day arbitration period. Copyright Owners, comments at 6-7.

D. Commencement of Proceedings. The commentators disagree as to when the precontroversy discovery period should begin and, consequently, when arbitration should be initiated. A majority of the commentators support the proposal of Joint Sports Claimants, who propose commencement of precontroversy discovery on August 18, 1995, and initiation of arbitration on October 30, 1995. Program Suppliers urge that precontroversy discovery begin on March 31, 1995, with the 180-day arbitration period starting on June 7, 1995. Music Claimants do not endorse either position, but do not believe that precontroversy discovery should begin any time before "mid-May." NPR takes a similar approach, favoring a June start.

1. Program Suppliers proposal. Program Suppliers argue that an immediate start to the 1990 cable

distribution proceeding is necessary to reduce the backlog of cable and satellite distributions and rate adjustments created by the elimination of the Copyright Royalty Tribunal. Program Suppliers, comments at 2. There have been no compulsory license hearings since the fall of 1993, and a number of proceedings are or will be ripe for decision:

—All cable compulsory license distribution cases from 1990 forward;

—All satellite carrier compulsory license distribution cases from 1992 forward;

—The five-year cable royalty rate adjustment case under 17 U.S.C. §§801(b)(2)(A) and (D) and 803(a)(2) must be filed during 1995; and

—The satellite carrier fee negotiation and arbitration under 17 U.S.C. 119(c) must begin on July 1, 1996 with initiation of arbitration no later than January 1, 1997.

*Id.* Program Suppliers concede that consolidation of the 1990, 1991, and 1992 cable distribution proceedings will help to reduce this backlog, but only a combination of consolidation and prompt scheduling of hearings will bring all matters up-to-date. *Id.* at 3.

Program Suppliers recommend that the 45-day precontroversy discovery period begin on March 31, 1995, and conclude on May 10, 1995. Arbitration would begin on June 7, 1995. *Id.* at 4-5. Program Suppliers argue that under this proposal, arbitration will be completed by December, thereby clearing the 1996 calendar for 1993 cable distribution, 1992 satellite distribution, and cable rate adjustment CARP proceedings, if necessary. Creating the scheduling possibility for two CARP hearings in 1996 by completing the 1990 cable distribution in 1995 "would help considerably to relieve the backlog that will exist at that time." *Id.* at 3.

While Program Suppliers acknowledge that their proposed schedule is ambitious and will require hard work by the parties, they argue that it does not grant them any unfair advantage. They note that the Bortz study introduced by Joint Sports Claimants in the 1990 distribution proceeding before the Copyright Royalty Tribunal, the "principal evidentiary presentation supported by all the parties in the 1990 hearing other than Program Suppliers," contained data for 1990, 1991 and 1992. Program Suppliers, however, have yet to receive their principal data, the Nielsen study, for those same years. *Id.* at 6.

In addition to proposing precontroversy discovery and arbitration starting dates, Program Suppliers recommend specific dates for all precontroversy procedural deadlines proposed in the comments of Copyright Owners:

Filing	Deadline
Written Direct Cases.....	Mar. 31, 1995
Request for Underlying Document Related to Written Direct Cases.	Apr. 10, 1995
Responses to Requests for Underlying Documents.	Apr. 14, 1995
Completion of Document Production.	Apr. 20, 1995
Follow-Up Document Requests, if Any.	Apr. 25, 1995
Responses to Follow-Up Requests.	Apr. 28, 1995
Motions Related to Document Production to Date.	May 2, 1995
Completion of Document Production For Follow-Up Requests, if Any.	May 8, 1995
All Other Motions, Petitions, and Objections.	May 10, 1995
Commencement of the 180-day Period.	June 7, 1995
Start of Evidentiary Hearing.	June 13, 1995

*Id.* at 4-5. Program Suppliers envision that direct case hearings would be completed by August 4, and recommend that further hearings be suspended until at least September 6, 1995, during which time the parties would exchange rebuttal cases and conduct discovery of the rebuttal cases. *Id.* at 5. They further suggest that rebuttal hearings be completed by the end of September, and that proposed and reply findings of fact and conclusions of law be briefed in October and early November so that "the CARP decision could be issued by December 4, the last day of the 180-day period." *Id.*

2. Joint Sports Claimants proposal. Joint Sports Claimants argue that Program Suppliers proposed schedule does not permit sufficient preparation time for a consolidated 1990-92 proceeding, and strongly opposes any schedule that would begin precontroversy discovery prior to August 18, 1995. They submit that a consolidated 1990-92 proceeding will be the most complicated in which the parties have ever participated, and will be before arbitrators "who, presumably, will be selected for their expertise in dispute resolution rather than familiarity with cable copyright issues." Joint Sports Claimants, comments at 3. Adequate preparation time is, therefore, needed "to locate witnesses, to commission and to complete research and to prepare testimony and exhibits." *Id.* at 4. Joint Sports Claimants further note that Program Suppliers' concern with the current backlog of proceedings is adequately addressed by consolidating the 1991 and 1992 cable distribution with the 1990 proceeding. *Id.* at 5.

Joint Sports Claimants propose an August 18, 1995 start date for

precontroversy discovery and an October 30, 1995 initiation of arbitration. They are supported in their commencement proposal by NAB, Devotional Claimants, Canadian Claimants and PBS. See NAB, comments at 3-4; Devotional Claimants, comments at 2; Canadian Claimants, comments at 1; PBS, comments at 1. Joint Sports Claimants recommend the following dates for the precontroversy discovery procedural deadline schedule proposed in the comments of the Copyright Owners:

Filing	Deadline
Written Direct Cases.....	Aug. 18, 1995
Request for Underlying Document Related to Written Direct Cases.	Aug. 28, 1995
Responses to Requests for Underlying Documents.	Sept. 1, 1995
Completion of Document Production.	Sept. 8, 1995
Follow-Up Requests for Underlying Documents	Sept. 13, 1995
Responses to Follow-Up Requests.	Sept. 18, 1995
Motions Related to Document Production.	Sept. 20, 1995
Production of Documents in Response to Follow-Up Requests.	Sept. 27, 1995
All Other Motions, Petitions, and Objections.	Oct. 2, 1995
Commencement of 180-day Period.	Oct. 30, 1995

*Id.* at 2. Joint Sports Claimants do not make any scheduling proposals for the conduct of hearings before the CARP.

3. Music Claimants and NPR. Music Claimants and NPR do not endorse the scheduling proposals of either Program Suppliers or Joint Sports Claimants. Music Claimants request that precontroversy discovery begin no sooner than mid-May 1995 to allow adequate preparation time for the written direct cases. Music Claimants, comments at 7. NPR requests a starting date no earlier than June, with hearings commencing no sooner than September. NPR, comments at 4.

### III. Consolidation of Proceedings, Notices of Intent to Participate, and Scheduling

Having fully considered the comments of the interested parties, the Copyright Office is consolidating the 1991 and 1992 cable royalty distribution with the 1990 distribution proceeding, and is requesting that interested parties, who have not already done so, file a Notice of Intent to Participate for the 1991 and 1992 distribution no later than April 5, 1995. The precontroversy discovery period will begin on August 18, 1995, and proceed according to the schedule described below.

### Consolidation of Proceedings

The commentators report the existence of controversies for the 1990, 1991 and 1992 cable royalty funds and request that the Copyright Office consolidate distribution of these funds into a single proceeding. Although the 1993 royalty funds are available for distribution, the commentators do not favor consolidation of the 1993 funds. The Office believes that consolidation of the 1990, 1991 and 1992 royalties into a single distribution proceeding is manageable and cost effective, and that addition of the 1993 funds to the proceeding may be unduly burdensome. Consolidation of three funds itself represents an unprecedented distribution, and is a major step towards eliminating the existing backlog of copyright compulsory license proceedings. We are, therefore, consolidating the 1990-92 cable royalty funds for distribution, and will conduct a single proceeding necessary to the resolution of all controversies related to these funds.

By consolidating the 1990-92 distributions, the Office will handle Phase I and Phase II controversies in those funds sequentially. That is, we will first conduct a proceeding and convene a CARP to resolve all Phase I controversies for the 1990-92 funds, and, after that proceeding has been completed, we will ascertain the existence of any Phase II controversies and conduct separate proceedings. The issue of whether to convene separate CARPs for each Phase II controversy, or to allow a single CARP to resolve more than one controversy, will be decided at the time the Office determines the existence of Phase II controversies, if any.

#### Notices of Intent to Participate

The Copyright Office has received Notices of Intent to Participate from the parties wishing to participate in the CARP proceedings for the 1990 cable royalty distribution. The Office noted in the Notice requesting comments on the existence of cable distribution controversies that if it consolidated the 1990 cable distribution with one or more subsequent years it would then issue a request for Notices of Intent to Participate for those subsequent years. 59 FR 64714, 64715 (1994).

We are consolidating the 1991 and 1992 cable distribution with the 1990 proceeding. Therefore, those claimants who wish to present evidence to the CARPs for distribution of the 1991 and 1992 royalties must, if they have not already done so, file a Notice of Intent to Participate for those years. Notices must be filed no later than April 5, 1995. Failure to file a timely Notice of Intent to Participate may subject the claim to dismissal. The filing of a Notice of Intent to Participate is thus critical to a claimant being able to present an effective claim.

### Scheduling of the 1990-92 Cable Distribution Proceeding

The Copyright Office is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the 1990-92 cable distribution proceeding. In addition, the Office is announcing the date on which the existence of controversies to the 1990-92 cable funds will be declared and arbitration initiated, thereby commencing the 180-day arbitration period. Once a CARP has been convened, the scheduling of the arbitration period is within the discretion of the CARP and will be announced at that time.

A. *Commencement of the Proceeding.* A royalty distribution proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in §251.45. The other phase is the proceedings before a CARP itself, including the presentation of evidence through live hearings and the submission of proposed findings by all of the parties. Both of these phases to a distribution proceeding require significant amounts of work, not just for the parties, but for the Librarian, the Copyright Office and the arbitrators as well. Selection of a date to commence a distribution proceeding is, therefore, not dependent on the schedules of one or more of the participating parties, but must be weighed against the interests of all involved.

Because there are two phases to a distribution proceeding—precontroversy discovery and arbitration—there are two time periods to be scheduled. The regulations do not provide how much time must separate precontroversy discovery from initiation of arbitration. Program Suppliers and Joint Sports Claimants, in their proposed schedules, both recommended a period of 28 days from the end of precontroversy discovery to the beginning of the 180-day arbitration period. See Program Suppliers, comments at 5; Joint Sports Claimants, comments at 2. The Copyright Office agrees that there is no reason to schedule an inordinate amount of time between the two; however, there must be adequate time for the Librarian to rule upon all motions filed within the 45-day precontroversy period. Since motions could, and undoubtedly will be filed on the last day of the period, a sufficient amount of time must be allowed to receive oppositions (7 days from filing of motion) and replies (5 business days from date of service of opposition), and to consider those motions and issue decisions and orders. Given these considerations, the uniqueness of cable distribution for the Office, and the complexities of the

proceedings involving three years worth of royalties, we believe that a period of 45 days between the end of the precontroversy discovery period and the declaration of controversies/initiation of arbitration is necessary for the Office to adequately complete its task.

The issue remains as to what date precontroversy discovery should begin and, subsequently, initiation of arbitration. The commentators are divided. Program Suppliers believe that precontroversy discovery should begin at the end of March of this year to speed the reduction of royalty funds currently ripe for distribution, and to allow the scheduling of more than one CARP next year to handle distributions and/or rate adjustments. The remainder of the commentators argue that a March starting time is premature because it does not allow sufficient preparation time for what will be the first CARP proceeding. Music Claimants and NPR favor commencement in mid-May and early June, respectively. Joint Sports Claimants state that they are opposed to any schedule which begins the 1990-92 cable distribution proceeding prior to August 18, 1995. They are supported by Devotional Claimants, Canadian Claimants, PBS, and NAB, whose support for consolidation of the 1991 and 1992 funds with the 1990 distribution is contingent upon acceptance of Joint Sports Claimants' proposed schedule.

Because the commentators are so widely divided, the obvious compromise solution would be to split the difference in proposed starting dates. This would result in starting precontroversy discovery sometime in early June, which is NPR's proposal. However, in an open meeting of all parties filing Notices of Intent to Participate in the 1990 distribution held at the Copyright Office, the parties expressed strong opposition to any compromise position, and urged the Office to select one of the proposed schedules. Meeting, held February 6, 1995. We are complying with the parties wishes and are selecting a starting date of August 18, 1995 for the 45-day precontroversy period. The period will conclude on October 2, followed by a 45-day period in which the Librarian and the Copyright Office will complete all precontroversy discovery matters and issue all rulings. Controversies will be declared, and the 180-day arbitration period initiated, on November 17, 1995.

There are several reasons for selecting these dates. First, this is the first cable distribution proceeding under the new CARP regime and the parties should be afforded adequate time for preparation of their cases and evidence. A majority of the parties stated that they need until August 18 to allow them sufficient time to prepare. Second, a single distribution proceeding for the royalty years is unprecedented and presents a highly complex and involved proceeding. The difficulty of the proceeding will be further heightened by the fact that it

is the first test of the new CARP regulations governing cable distribution. We, therefore believe that the parties should have optimal preparation time to increase the likelihood of a smooth and efficient proceeding. Third, the Office wishes to avoid any scheduling conflicts with distribution proceedings of the 1992-94 DART royalty funds. We are currently seeking comment as to the existence of controversies for these funds, which are eligible for distribution after March 30, 1995. While it is anticipated that distribution settlements will be reached for these funds, convocation of a CARP or CARPs may nevertheless be necessary. It would be extremely difficult for the Office to conduct precontroversy discovery for cable as well as DART at the same time. An August 18 commencement date for cable distribution allows the Office to schedule a prior, nonoverlapping precontroversy discovery period for 1992-94 DART distribution.

**B. Precontroversy Discovery Schedule and Procedures.** Any party filing a Notice of Intent to Participate in the 1990-92 cable distribution for one or more of the royalty funds is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party nonprivileged underlying documents related to the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

Copyright Owners requested that the Copyright Office adopt a precontroversy discovery schedule that prescribes filing deadlines for discovery requests, responses and related motions. Because Copyright Owners believe their proposal is critical to an efficient and successful precontroversy discovery period, we will adopt it for purposes of this distribution proceeding.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

Action	Deadline
Filing of Written Direct Cases.	Aug. 18, 1995
Requests for Underlying Documents Related to Written Direct Cases.	Aug. 28, 1995
Responses to Requests for Underlying Documents.	Sept. 1, 1995
Completion of Document Production.	Sept. 8, 1995
Follow-Up Requests for Underlying Documents.	Sept. 13, 1995
Responses to Follow-Up Requests.	Sept. 18, 1995
Motions Related to Document Production.	Sept. 22, 1995
Production of Documents in Response to Follow-Up Requests.	Sept. 27, 1995
All Other Motions, Petitions and Objections.	Oct. 2, 1995

The §251.45(b) precontroversy discovery period begins on August 18, 1995 with the filing of written direct cases. Each party to the proceeding must serve by hand on that day a complete copy of its written direct case on each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Thus, the parties have until August 28 to request from one another Underlying Documents Related to Written Direct Cases, until September 1 to respond to Requests for Underlying Documents, and so forth. The dates listed in the schedule mark the deadlines by which the corresponding requests, responses and motions must be served and filed. In the case of document requests and all precontroversy discovery motions, failure to make a request or file a motion by the prescribed deadline precludes a party from making the request or filing the motion at a later date. For example, if a party fails to file a motion to compel production of Underlying Documents Related to Written Direct Cases by September 22, 1995, that party is precluded from filing that motion at a later date with either the Copyright Office or the CARP. In the case of document production responses, it is expected that parties receiving requests will respond by the appropriate deadline. Motions to comply with the request may be filed beginning on the first day after the response deadline and up to the September 22 deadline for motions related to document production.<sup>1</sup>

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such request or response is directed. A complete copy of the response or request shall also be served on the Copyright Office. Service via the mail, addressed to the official address in §251.1, is permissible.

Filing and service of all precontroversy motions, petitions, objections, oppositions and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all motions, petitions, objections, oppositions and replies must be brought to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington D.C. 20540, between the hours of 9 a.m. and 5 p.m. Form and content of such

<sup>1</sup> Motions related to the September 27 Production of Documents in Response to Follow-Up Requests may be filed up to the October 2 deadline for All Other Motions, Petitions and Objections.

motions, petitions, objections, oppositions and replies must be in compliance with §§251.44(b)-(e). As provided in §251.45(b), oppositions to motions, objections and petitions must be filed with the Copyright Office no later than seven business days from date of filing of such motions, objections and petitions. Replies are due five business days from the date of filing of oppositions. Service of all motions, petitions, objections, oppositions and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

Dated: March 13, 1995

**Marybeth Peters**  
*Register of Copyrights*

**James H. Billington**  
*Librarian of Congress*

[FR Doc. 95-6831 Filed 3-20-95; 8:45 am]

Billing Code: 1410-33-P