



ANNOUNCEMENT

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

ANNOUNCEMENT OF NEGOTIATION PERIOD; FILING NOTICE OF INTENT TO PARTICIPATE

ADJUSTMENT OF CABLE COMPULSORY LICENSE ROYALTY RATES

The following excerpt is taken from Volume 61, Number 57 of the *Federal Register* for Friday, March 22, 1996 (pp. 11896-11897)

LIBRARY OF CONGRESS**Copyright Office****[Docket No. 96-2 CARP-CRA]****Adjustment of Cable Compulsory License Royalty Rates****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Announcement of negotiation period; filing Notice of Intent to Participate.

SUMMARY: The Copyright Office of the Library of Congress is announcing the 30-day negotiation period to allow interested parties to the cable rate adjustment proceeding to settle their differences. The Office is also announcing, in the event that settlement negotiations are unsuccessful, the date by which parties wishing to participate in the rate adjustment proceeding before a Copyright Arbitration Royalty Panel (CARP) must file their Notice of Intent to Participate.

EFFECTIVE DATES: The 30-day negotiation period begins on April 15, 1996, and ends on May 15, 1996. Notices of Intent to Participate are due no later than May 20, 1996.

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: Marilyn Kretsinger, Acting General Counsel, or 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**

Section 111 of the Copyright Act, 17 U.S.C., grants a compulsory copyright license to cable television systems for the retransmission of over-the-air broadcast stations to their subscribers. In exchange for the license, cable operators submit royalty payments, along with statements of account detailing their retransmissions, to the Copyright Office on a semi-annual basis. The Office then deposits the royalties with the United States Treasury for later distribution to copyright owners of broadcast programming. Royalties collected by the Office in recent years for the cable compulsory license have amounted to approximately \$175 million annually.

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d). The cable system then makes a payment based upon its gross receipts from subscribers for the retransmission of broadcast signals. Section 111(d) subdivides cable systems, based on the amount of their gross receipts, into three categories: small, medium and large.

Small systems pay a fixed amount without regard to the number of broadcast signals they retransmit, while medium-sized systems pay a royalty within a specified range, with a maximum amount, based on the number of signals they retransmit. Large cable systems calculate their royalties according to the number of distant broadcast signals which they retransmit to their subscribers.¹ Under this formula, a large cable system is required to pay a specified percentage of its gross receipts for each distant signal that it retransmits.

Congress established the gross receipts limitations that determine a cable system's size, and provided the gross receipts percentages (rates) for distant signals. 17 U.S.C. 111(d)(1). It also provided for adjustment of both the gross receipts limitations and the distant signal rates. 17 U.S.C. 801(b)(2). The limitations and rates can be adjusted to reflect national monetary inflation, changes in the average rates charged by cable systems for retransmission of broadcast signals, or changes in certain cable rules of the Federal Communications Commission in effect on April 15, 1976. 17 U.S.C. 801(b)(2)(A),(B),(C) and (D). Prior rate adjustments of the Copyright Royalty Tribunal (CRT) made under section 801(b)(2)(B) and (C) may also be reconsidered at five year intervals. 17 U.S.C. 803(b). The current gross receipts limitations and rates are set forth in 37 C.F.R. 256.2. Originally, the CRT performed the rate adjustment, but in

¹ For cable systems which retransmit only local broadcast signals, there is still a minimum royalty fee which must be paid. This minimum fee is not applied, however, once the cable system carries one or more distant signals.

1993, Congress abolished the CRT and vested the rate adjustment authority in the Copyright Arbitration Royalty Panels (CARPs) as administered by the Library of Congress and the Copyright Office.

Section 803 of the Copyright Act, 17 U.S.C., provides that the gross receipts limitations and rates of the cable compulsory license may be adjusted in 1995, and every subsequent fifth calendar year, upon filing a petition with the Library of Congress requesting an adjustment during these window years. If the Library determines that the petitioner has a "significant interest" in the royalty rate or rates in which adjustment is requested, the Library must convene a CARP to determine the adjustment. 17 U.S.C. 803(a)(1). Section 251.63 of the Library's rules provides that "[t]o allow time for the parties to settle their differences regarding rate adjustments, the Librarian of Congress shall...designate a 30-day period for consideration of their settlement. The Librarian shall cause notice of the dates for that period to be published in the **Federal Register**." 37 C.F.R. 251.63.

II. Petitions

Last year was a window year for filing cable rate adjustment petitions and the Copyright Office received two such petitions on December 29, 1995. The first, filed by the National Cable Television Association, Inc. ("NCTA") on behalf of its member cable companies, requests an upward adjustment of the gross receipts limitations to reflect national monetary inflation, and a downward adjustment of "the rates currently specified in 37 C.F.R. §§256.2(c) and (d)(the "3.75 percent" rate and the "syndex surcharge")." NCTA petition at 1. NCTA asserts that it has a "significant interest" in the proposed adjustments as the trade association of cable systems serving over 80 percent of all cable subscribers. *Id.* at 1-2.

The second petition was filed by Program Suppliers, Joint Sports Claimants, the National Association of Broadcasters, Music Claimants (the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants, Devotional Claimants, the Public Broadcasting Service and National Public Radio (collectively, the "Copyright Owners"). The Copyright Owners request an upward adjustment of the rates specified in 37 C.F.R. 256.2, and claim that they have a "significant interest" in such adjustment as representatives of the major claimant categories entitled to distribution of cable royalty funds. Copyright Owners' petition at 1.

III. Negotiation Period and Notices of Intent to Participate

As discussed above, the Library of Congress rules provide a 30-day negotiation period prior to the filing of rate adjustment petitions to enable the parties to settle their differences. 37 C.F.R. 251.63(a). In accordance with this rule, the Library is designating the thirty day period to commence on April 15, 1996, and close on May 15, 1996. If settlement is not reached during this time period, those parties wishing to participate in a rate adjustment proceeding before a CARP must file a Notice of Intent to Participate no later than close of business on May 20, 1996. Failure to file a timely Notice of Intent to Participate will preclude a party from participating in the proceeding.

Dated: March 18, 1996

Marybeth Peters,
Register of Copyrights

Approved by:

James H. Billington,
The Librarian of Congress
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