



ANNOUNCEMENT

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

NOTICE OF PROPOSED RULEMAKING

NOTICE AND RECORDKEEPING FOR SUBSCRIPTION DIGITAL TRANSMISSIONS

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Chapter II

[Docket No. RM 96-3]

Notice and Recordkeeping for Subscription Digital Transmissions

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works from subscription digital transmission services, and how records of such use shall be kept and made available to copyright owners. The regulations are required to be adopted by the Digital Performance Right in Sound Recordings Act of 1995, and are intended to ensure proper payment to copyright owners.

DATES: Comments are due July 12, 1996. Reply comments are due August 12, 1996.

ADDRESSES: An original and fifteen copies of the comments shall be delivered to: Office of General Counsel, The Copyright Office, LM-407, The Madison Building, 101 Independence Avenue, S.E., Washington, D.C., or mailed to: Marilyn J. Kretsinger, Acting

General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William J. Roberts, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995. Pub. L. 104-39, 109 Stat. 337 (1995). Among other things, it created a new compulsory copyright license that is paid by nonexempt subscription digital transmission services to the copyright owners of sound recordings. 17 U.S.C. 114(f). Congress directed the Librarian of Congress to establish regulations by which the entities availing themselves of this new license would keep records of their use, make the records available to the copyright owners, and give notice to the copyright owners of the use of their works.

The Sec. 114 License for Nonexempt Subscription Digital Transmissions Services

The Digital Performance Right in Sound Recordings Act gave to copyright owners of sound recordings an exclusive right to perform their works by means of a digital audio transmission. Certain digital transmissions were exempted from the scope of this right, 17 U.S.C. 114(d)(1), while certain subscription digital transmission services were given

the opportunity to qualify for a compulsory license. 17 U.S.C. 114(d)(2).

A nonexempt subscription digital transmission qualifies for a compulsory license if the transmission is not part of an interactive service, does not exceed the sound recording performance complement, does not give an advance program schedule or prior announcements of the titles to be performed, does not automatically cause the receiving device to switch automatically from one program channel to another, and includes, if the copyright owner wants it, encoded information that identifies the title, the featured artist, and related information. 17 U.S.C. 114(d)(2).

If a service offering subscription digital transmissions qualifies for the compulsory license, it has the choice of reaching a voluntary agreement with the owners of the sound recordings it wishes to use, or, failing that, it may petition the Librarian of Congress to convene a copyright arbitration royalty panel (CARP) to set the rates and terms of the compulsory license. 17 U.S.C. 114(f). The terms and rates set by a CARP will be applicable to all subscription digital transmission services not subject to a voluntary agreement. However, the above mentioned requirements for notice and recordkeeping are to be set by the Librarian, not the CARP. 17 U.S.C. 114(f)(2).

On December 1, 1995, the Copyright Office and the Library of Congress initiated the six month period for negotiating the rates and terms for a compulsory license for subscription digital transmission services. 60 FR 61655 (Dec. 1, 1995). The period will run until June 1, 1996, after which the parties

have 60 days to petition the Librarian to convene a CARP to set the rates and terms for those entities who have not reached voluntary agreements.

In the meantime, any person who wishes to perform a sound recording publicly by means of a nonexempt subscription transmission may do so without infringing the rights of the copyright owner of the sound recording by complying with the notice requirements set by the Librarian of Congress and agreeing to pay the royalty fees as they are determined. 17 U.S.C. 114(f)(5).

This notice requirement, however, is an affirmative duty placed on the digital transmission subscription services to provide reasonable notice to the copyright owners of the use of their sound recordings. 17 U.S.C. 114 (f)(2). Therefore, it is important for the Copyright Office and the Library of Congress to begin this rulemaking to establish the notice and recordkeeping requirements so that persons wishing to abide by section 114 (f)(5) may do so.

Although we do not propose any specific regulatory language, commentators should consider both the adequacy of the notice to the copyright owners of the sound recordings and the administrative burdens placed on the digital transmission services in providing notice and maintaining records of use.

Dated: May 3, 1996

Recommended by:

Marybeth Peters,
Register of Copyrights.

Approved by:

James H. Billington,
The Librarian of Congress.
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[Billing Code: 1410-30]