



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

ANNOUNCEMENT OF THE SCHEDULE FOR THE PROCEEDING.

ADJUSTMENT OF THE RATES FOR THE NONCOMMERCIAL EDUCATIONAL BROADCASTING COMPULSORY LICENSE

The following excerpt is taken from Volume 63, Number 41 of the
Federal Register for Tuesday, March 3, 1998 (pp.10414-10415)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-6 CARP NCBRA]

Adjustment of the Rates for the Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180-day arbitration period for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license, as required by the regulations governing this proceeding.

EFFECTIVE DATE: March 3, 1998.

ADDRESSES: All hearings and meetings for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license shall take place in the James Madison Building, Room LM-414, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or William R. Roberts, Senior Attorney, at: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.
Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels, 37 CFR subchapter B, provides that:

At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the *Federal Register* at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of Sec. 251.11(b) for the proceeding to adjust the royalty rates for the noncommercial educational broadcasting compulsory license.

On October 18, 1996, the Library announced a voluntary negotiation period, the precontroversy discovery schedule, and an initiation date for a Copyright Arbitration Royalty Panel (CARP) for this docket. The Office also requested each interested party to file a Notice of Intent to Participate with the Office no later than December 13, 1996. 61 FR 54458 (October 18, 1996). On November 11, 1996, the National Public Radio (NPR), the Public Broadcasting Service (PBS), the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc., the National Music Publishers Association, Inc. (NMPA), and the Harry Fox Agency, Inc., filed notices of intent to participate. On June 19, 1997, the National Religious Broadcasters Music License Committee (NRBMLC) requested leave to file its notice of intent to participate after the deadline for making this filing had passed. The Register granted its motion and accepted the filing. Order in Docket No. 96-6

CARP (NCBRA) (July 30, 1997). Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, did not file notices of intent to participate, although they participated in the negotiations of certain rates and terms of interest to their members.

The October 18, 1996, order set January 10, 1997, as the commencement date for the precontroversy discovery period. See 61 FR 54458 (October 18, 1996). However, the parties requested that the schedule set forth in the October 18 order be vacated in order to give the parties additional time to negotiate voluntary agreements. The Office granted the parties' request for additional time, vacated the precontroversy discovery schedule, and instructed the parties to appear at the Library on May 1, 1997, for a status report on the progress of their settlement negotiations. Order in Docket No. 96-6 CARP NCBRA (December 23, 1996). At the May 1 status conference, the parties again requested additional time, which the Office granted, provided the parties updated the Office on the status of their negotiations in July 1997. At a status meeting on July 24, 1997, the parties identified a need for a CARP proceeding. On July 30, 1997, the Office announced a second schedule setting dates for the precontroversy discovery period and set December 31, 1997, as the date for the initiation of arbitration. Order in Docket No. 96-6 CARP NCBRA (July 30, 1997).

In accordance with the new schedule, NRBMLC, PBS, and NPR filed proposed rates and terms for the payment of royalty fees to unaffiliated copyright owners on September 2, 1997. Subsequently, on October 1, 1997, the parties filed additional joint proposals for further adjusting the rates and terms of the section 118 compulsory license and notices of settlement. The Office published all the proposed rates and terms in the *Federal Register* for public review and

comment, pursuant to 37 CFR 251.63. 62 FR 51619 (October 2, 1997) and 62 FR 63502 (December 1, 1997). The December 1, 1997, notice announced that the proposed regulations would become final on January 1, 1998, unless an interested party filed a challenge to the proposed regulations and a Notice of Intent to Participate in a CARP proceeding, on or before December 29, 1997. 62 FR 63502 (December 1, 1997). See also 62 FR 65777 (December 16, 1997) (correction notice clarifying the filing dates). The Office received no comments or Notices of Intent to Participate in a CARP proceeding in response to its notices of the proposed rates and terms, and on January 14, 1998, the Office announced its adoption of the proposed rates and terms as final regulations, pursuant to 37 CFR 251.63(b). 63 FR 2142 (January 14, 1998).

A controversy remained, however, regarding the rates to be paid by PBS and NPR for the use of musical works licensed by ASCAP and BMI. The parties filed several motions to compel document production on November 7, 1997, in accordance with the July 30, 1997, order. The parties requested a large volume of document production in these motions. With such a large volume of document production still to be completed, the Office recognized that the 180-day period could not commence on December 31, 1997. Accordingly in its order ruling on the motions to compel, the Office granted additional time for the completion of document production and reset the date for initiation of the 180-day period to January 30, 1998. Order in Docket No. 96-6 CARP NCBRA (December 30, 1997). On February 2, 1998, the Library announced the initiation of the CARP proceeding to resolve this controversy. 63 FR 5405 (February 2, 1998).

On February 3, 1998, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule for this proceeding. At that meeting, the parties and the arbitrators agreed to the following schedule:

Opening Statements for all parties:
February 26, 1998
Presentation of Direct Cases:
American Society of Composers, Authors and Publishers (ASCAP)
February 26, 1998.....Mary Rodgers.
ASCAP
March 9, 1998.....Richard H. Reimer.
Bennett M. Lincoff.
Jon A. Baumgarten.
ASCAP
March 12, 1998.....James Ledbetter.
Carol Grajeda.
Horace Anderson.
Ray Schwind.
Seth Saltzman.
ASCAP
March 13, 1998.....James Day.
Robert Unmacht.
Ed Bergstein.
David Bander.
Lauren Iossa.
Broadcast Music, Inc. (BMI)
March 16, 1998.....Alison Smith.
Fredric J. Willms.
Bruce M. Owen.
BMI
March 17, 1998.....Bruce M. Owen.
Michael Bacon.
BMI
March 18, 1998.....Michael Bacon.
Janet R. McFadden.
Roy J. Epstein.
ASCAP
Public Broadcasting Service (PBS) and National Public Radio (NPR) (did not provide breakdown of dates for witnesses).
March 19, 1998.....Dr. Peter Boyle.
March 20, 1998.....Peter Downey.
Peter Jablow.
Paula Jameson.
Adam Jaffe.
PBS/NPR
March 30, 1998.....Peter Downey.
Peter Jablow.
Paula Jameson.
Adam Jaffe.

Continuation of Presentation of Direct Cases:
March 31, 1998, April 1-3¹, 1998
Filing Deadline for Written Rebuttal Cases:
April 15, 1998
Presentation of Rebuttal Cases:
April 27-30, 1998
Filing Deadline for Proposed Findings of Fact and Conclusions of Law:
May 22, 1998
Filing Deadline for Replies to Proposed Findings of Fact and Conclusions of Law:
June 1, 1998
Oral argument:
June 16, 1998
Close of 180-day period:
July 28, 1998
All hearings will begin at 10 a.m. and end at 5 p.m.

The regulations require that the Copyright Office publish the original schedule for the CARP proceeding in the Federal Register at least seven calendar days in advance of the first meeting. 37 CFR 251.11(b). Pursuant to 37 CFR 251.11(d), however, the arbitrators voted to publish the schedule on shorter notice than the required seven days in order to allow the parties an opportunity to finalize the witness list for their direct cases before publication of the schedule. The results of the vote on the question, whether the requirement for a seven calendar day notice should be waived, are:

The Hon. Lewis Hall Griffith, Chairperson: Yes
The Hon. Edward Dreyfus: Yes
The Hon. Jeffrey S. Gulin: Yes

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: February 25, 1998.
David O. Carson,
General Counsel.

[FR Doc. 98-5440 Filed 3-2-98; 8:45 am]

BILLING CODE 1410-33-P

¹ This date may have to be rescheduled.