



ANNOUNCEMENT

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

INTERIM RULE AMENDMENT.

NOTICE AND RECORDKEEPING FOR NON-SUBSCRIPTION DIGITAL TRANSMISSIONS

The following excerpt is taken from Volume 64, Number 227 of the *Federal Register* for Friday, November 26, 1999 (pp. 66391-66392)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99-5C]

Notice and Recordkeeping for Non-subscription Digital Transmissions

AGENCY: Copyright Office, Library of Congress

ACTION: Interim rule amendment.

SUMMARY: The Copyright Office is extending the date by which a non-interactive, non-subscription service currently making digital transmissions of sound recordings must file an initial notice of digital transmission with the Copyright Office from October 15, 1999, to December 1, 1999.

EFFECTIVE DATE: November 26, 1999.

FOR FURTHER INFORMATION

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SUPPLEMENTARY INFORMATION:

The Digital Performance Right in Sound Recordings Act of 1995, Public Law 104-39, 109 Stat. 336, created a statutory license that allowed an eligible subscription service to perform publicly a sound recording by means of digital audio transmissions, provided that the service adheres to the terms of the license and complies with the notice and recordkeeping regulations promulgated by the Librarian of Congress, 17 U.S.C. 114(f)(2) (1995). Three years later with the passage of the Digital Millennium Copyright

Act of 1998 ("DMCA"), Congress expanded the scope of this license to include non-exempt, non-subscription transmission services and two preexisting satellite digital audio radio services.

Prior to the passage of the DMCA, the Copyright Office published regulations to govern how a subscription service was to provide notice to the copyright owners of the sound recordings and maintain specific records documenting the use of these works. See 63 FR 34289 (June 24, 1998). Under these regulations, each service had to file an initial notice of digital transmission with the Licensing Division of the Copyright Office, 37 CFR 201.35. The deadline for filing this notice was structured to allow a service to file its notice either before it commenced operation, or in the case of a service already making transmissions prior to the publication of the rule, within 45 days of the effective date of the regulation.

These filing requirements, however, did not allow a service newly eligible to make use of the license under the DMCA to make a timely filing of its initial notice of digital transmission. Therefore, the Office proposed an amendment to 201.35(f) which extended the date for filing an initial notice to October 15, 1999, in the case of those services operating under the expanded license. 64 FR 42316 (August 4, 1999). The proposed amendment was unopposed, and the Office adopted the change as a final interim regulation on September 20, 1999. 64 FR 50758 (September 20, 1999).

Subsequently, the National Association of Broadcasters ("NAB") filed a petition with the Copyright Office, seeking an extension of the October 15 deadline for filing the initial notices to December 1, 1999. NAB made this request because it believed that many potentially affected parties were unaware of the need to file an initial notice by the October 15, 1999, date, and consequently,

missed the filing deadline. See 64 FR 59140 (November 2, 1999). Since that date, the Copyright Office has received several hundred initial notices from non-subscription services that are currently operating under the section 114 license and expects additional filings to continue. Thus, it appears that many of the potentially affected parties were unaware of the rule change that set a date certain by which these services had to file an initial notice of digital transmission of sound recordings.

In recognition of the apparent breakdown in the process to disseminate the information regarding

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the filing requirement to those parties most affected by the interim rule change and the lack of any comments opposing the extension of the filing date, the Office is amending its interim regulation in accordance with NAB's suggestion and adopting the proposed December 1, 1999, date.

A service should be aware that the date-specific filing deadline for non-subscription services is significant only if it has made a digital transmission under the statutory license prior to that filing date. Any preexisting entity, just as any new entity which chooses to make use of the license at a future time, may file its initial notice after these dates, so long as it files its initial notice with the Licensing Division prior to the first transmission of a sound recording.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress which is part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Register of Copyrights considers the effect of a proposed

amendment on small businesses. For that reason, the Register is amending yet again 37 CFR 201.35(f) in order to allow small business entities that are eligible for the statutory license to make a timely filing of its initial notice of digital transmission. The Register sought the amendment at the request of the NAB, an organization that represents the interests of numerous small broadcasters who were heretofore unaware of the filing requirement.

List of Subjects in 37 CFR Part 201

Copyright.

Final Interim Regulation

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended as follows:

PART 201--GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702

Sec. 201.35 [Amended]

2. Section 201.35(f) is amended by removing the date "October 15" and inserting in its place "December 1".

Dated: November 18, 1999.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

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