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

NOTICE WITH A REQUEST FOR COMMENTS AND ANNOUNCEMENT OF NEGOTIATION PERIOD.

ADJUSTMENT OF CABLE STATUTORY LICENSE ROYALTY RATES

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000-4 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress

ACTION: Notice with a request for comments and announcement of negotiation period.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of petitions to adjust the royalty rates for the cable statutory license. The Office seeks comments on the petitions, announces the deadline for filing Notices of Intent to Participate in a CARP proceeding to adjust the rates, and announces the dates of the 30-day negotiation period.

DATES: Comments on the petitions, and Notices of Intent to Participate, are due no later than April 6, 2000. The 30-day negotiation period begins on April 10, 2000, and ends on May 10, 2000. Written notification of the status of settlement negotiations is due no later than May 11, 2000.

ADDRESSES: If sent by mail, an original and five copies of the comments on the petitions, Notice of Intent to Participate, and written notification of status of settlement negotiations 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 should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, title 17 of the United States Code, grants a statutory 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 royalties, 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 the broadcast programming retransmitted by cable systems.

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d). Royalty fees are based upon the gross receipts received by a cable system from subscribers receiving retransmitted broadcast signals. Section 111(d) subdivides cable systems into three categories based on their gross receipts: 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 (i.e., the royalty 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 the 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 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 CFR 256.2. Rate adjustments are now made by a Copyright Arbitration Royalty Panel (CARP), subject to review by the Librarian of Congress.

Section 803 of the Copyright Act provides that the gross receipts limitations and royalty rates may be adjusted every five years beginning with 1995, making this a royalty adjustment year, upon the filing of a petition from a party with a "significant interest" in the proceeding. If the Librarian determines that a petitioner has a "significant interest" in the royalty rate or rates in which adjustment is requested, the Librarian 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 timefor the parties to settle their differences

[1] For large cable systems which retransmit only local broadcast stations, 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.

concerning * * * rate adjustments, the Librarian of Congress shall * * * designate a 30-day period for negotiation of a settlement. The Librarian shall cause notice of the dates for that period to be published in the Federal Register." 37 CFR 251.63(a).

II. Petitions

In this window year for filing petitions to adjust the cable rates and gross receipts limitations, the Library has already received two. Both petitions come from copyright owner groups: the first filed on behalf of the National Basketball Association, the National Hockey League, Major League Baseball, and the National Collegiate Athletic Association (collectively, the "Joint Sports Claimants"), and the second filed on behalf of Program Suppliers.

Both petitioners seek adjustment of the cable rates, and both assert they have a significant interest in the adjustment based upon their longtime status as recipients of royalty fees submitted under the cable statutory license. Consistent with 17 U.S.C. 803(a)(1), the Library seeks comment as to whether Joint Sports Claimants and Program Suppliers have a significant interest in the adjustment of the cable rates. Comments are due no later than April 6, 2000.

III. Negotiation Period and Notices of Intent To Participate

As discussed above, the Library's rules require that a 30-day negotiation period be prescribed by the Librarian to enable the parties to a rate adjustment proceeding to settle their differences. 37 CFR 251.63(a). The rules also require interested parties to file Notices of Intent to Participate with the Library. 37 CFR 251.45(a). Consequently, in addition to requiring parties to file comments on the Joint Sports Claimants' and Program Suppliers' petitions, the Library is directing parties to file their Notices of Intent to Participate on the same day, April 6, 2000.[2] Failure to file a timely Notice of Intent to Participate will preclude a party from further participation in this proceeding.

The 30-day negotiation period shall begin on April 10, 2000, and conclude on May 10, 2000. Those parties that have filed Notices of Intent to Participate are directed to submit to the Library a written notification of the status of their settlement negotiations no later than May 11, 2000. If, after the submission of these notifications, it is clear that no settlement has been reached, the Library will issue a scheduling order for a CARP proceeding to resolve this rate adjustment proceeding.

[2] The Library is changing its practice to require Notices of Intent to Participate to be filed prior to the start of the 30-day negotiation period, rather than at the end. The purpose of the change is to identify the participants to the proceeding before the negotiation period in order to facilitate complete settlements among all interested parties.

Dated: February 22, 2000.
David O. Carson,
General Counsel.

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