



ANNOUNCEMENT

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

NOTICE OF NEGOTIATION PERIOD AND REQUEST FOR NOTIFICATION

ADJUSTMENT OF RATES AND TERMS FOR THE DIGITAL PERFORMANCE OF SOUND RECORDINGS

The following excerpt is taken from Volume 66, Number 6 of the *Federal Register* of Tuesday, January 9, 2001 (pp. 1700-1701)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. 2001-1 CARP DSTRA2]

Adjustment of Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of negotiation period and request for notification.

SUMMARY: The Copyright Office of the Library of Congress is announcing the 6-month negotiation period for the adjustment of royalty rates and terms for the public performance of copyrighted sound recordings by preexisting subscription services and preexisting satellite digital audio radio services. The Office is also requesting those parties participating in the negotiations to so notify the Office.

DATES: The 6-month negotiation period commences on January 9, 2001. Notification of participation in the negotiation period is due by January 31, 2001.

ADDRESSES: An original and five copies of notification of participation in the settlement negotiations may be hand delivered to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, S.E., Washington, DC 20559-6000; or mailed to: Copyright Arbitration Royalty [(Page 1701)], Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: Since 1995, copyright owners of sound recordings have enjoyed an exclusive right to perform publicly their copyrighted works by means of a digital audio transmission, subject to certain limitations. 17 U.S.C. 106(6). Among the initial limitations placed on the performance of a sound recording was the creation of a statutory license for performances made by nonexempt, noninteractive, digital subscription services. 17 U.S.C. 114 (1995).

After receipt of a petition from the Recording Industry Association of America ("RIAA"), the Librarian of Congress conducted a CARP proceeding to establish rates and terms for the statutory license. The eligible subscription services that participated in that proceeding were Digital Cable Radio Associates, Digital Music Express, Inc. and Muzak, L.P. The Librarian issued a final determination of rates and terms, which was appealed by the RIAA. 63 FR 25394 (May 8, 1998). The U.S. Court of Appeals for the District of Columbia Circuit affirmed the rates, but remanded the matter of certain payment terms to the Library for further proceedings. *Recording Industry Ass'n of America v. Librarian of Congress*, 176 F.3d 528 (D.C. Cir. 1999). The remand has yet to be resolved.

In 1998, as part of the amendments made by the Digital Millennium Copyright Act ("DMCA"), the section 114 statutory license was expanded, and a new schedule for rate adjustment proceedings was established. For subscription services in existence prior to passage of the DMCA (defined as "pre-existing subscription services"), and for satellite digital audio radio services in existence prior to passage of the DMCA (defined as "pre-existing satellite digital audio radio services"), the Librarian of Congress is required to announce a 6-month negotiation period in the first week of January 2001 for purposes of promoting settlement of the terms and rates of the statutory license. 17 U.S.C. 114(f)(1)(C)(i)(II). This notice fulfills that requirement.

Announcement of Negotiation Period

Pursuant to section 114(f)(1)(C)(i), the Librarian of Congress is announcing a 6-month negotiation period for the settlement of rates and terms for the statutory license for preexisting subscription services and preexisting satellite digital audio radio services. If the 6-month negotiation period fails to yield a full settlement, interested parties must petition the Librarian for a CARP proceeding during the period commencing on July 1, 2001, and ending August 29, 2001. 17 U.S.C. 114(f)(1)(C)(ii)(II).

Request for Notification

In order to facilitate productive settlement discussions during the negotiation period, and to facilitate complete settlement, see 65 FR 10564 (February 20, 2000), it is useful to create a list of parties that wish to participate in the negotiation period. The list should be in a centralized location and available to the public so that interested parties may identify each other and begin their settlement discussions. Consequently, the Library is requesting that those parties wishing to participate in the 6-month negotiation period file notification with the Copyright Office by January 31, 2001.

The list compiled by the Copyright Office is solely for informational purposes and is on a voluntary basis. In other words, parties that wish to participate in the negotiation period are not required to file notification and may file notification with the Office at any time after the January 31, 2001, deadline up until the end of the negotiation period. The notification is not a Notice of Intent to Participate in a CARP proceeding, because, as provided in 17 U.S.C. 114(f)(1)(B), the Librarian cannot begin a CARP proceeding until petitioned to do so after the end of the negotiation period. If the Library receives such a petition, it will call for Notices of Intent to Participate at a later date.

Dated: January 4, 2001.

David O. Carson,
General Counsel.

[FR Doc. 01-581 filed 1-8-01; 8:45 am]

BILLING CODE 1410-33-P