



ANNOUNCEMENT

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

NOTICE WITH REQUEST FOR COMMENTS AND NOTICES OF INTENTION TO PARTICIPATE

ASCERTAINMENT OF CONTROVERSY FOR THE DISTRIBUTION OF THE 1999, 2000 AND 2001 DIGITAL AUDIO RECORDING ROYALTY FUNDS

The following excerpt is taken from Volume 67, Number 136 of the *Federal Register* of Tuesday, July 16, 2002 [Notices] (pp. 46698-46699)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. 2002-6 DD 99-01]

Ascertainment of Controversy for the Distribution of the 1999, 2000 and 2001 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected in 1999, 2000 and 2001 for the distribution of digital audio recording devices and media to submit comments as to whether a controversy exists as to the distribution of the royalty fees in the 1999, 2000 and 2001 Musical Works Funds.

DATES: Comments and Notices of Intention to Participate are due September 16, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate 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 the Office of the General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: 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:

I. Background

The Audio Home Recording Act of 1992 (the "Act"), Public Law 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution among interested copyright parties, provided that the copyright owners file a claim with the Copyright Office each year during January and February. 17 U.S.C. 1005, 1007.

The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66-2/3% of the royalties and the Musical Works Fund receives the remaining 33-1/3%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The two subfunds created for the benefit of nonfeatured artists receive a total of 4% of the funds allocated to the Sound Recordings Fund. Of the remaining royalty fees in the Sound Recordings Fund, 60% is allocated to the Copyright Owners Subfund and 40% is allocated to the Featured Recording Artists Subfund. Similarly, the royalty fees allocated to the Musical Works Fund are equally divided between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b).

Distribution of these fees may occur in one of two ways. If the claimants within each subfund agree among themselves how to distribute the royalty fees, the Librarian of Congress distributes the royalties to the claimants in accordance with their negotiated agreement.¹ 17 U.S.C. 1007(b). Alternatively, if the parties cannot reach an agreement, the Librarian of Congress must convene a copyright arbitra-

tion royalty panel ("CARP") to determine the distribution of royalty payments.² 17 U.S.C. 1007(c). Before commencing a distribution proceeding, however, the Copyright Office must first ascertain whether and to what extent a controversy exists concerning the distribution of the royalty fees among the copyright claimants to the funds available for distribution. 17 U.S.C. 803(d) and 1007(b).

II. Ascertainment of Controversy and Notices of Intention To Participate

Section 251.45(a) of the Copyright Office regulations, title 37 of the Code of Federal Regulations, requires that:

[T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

The purpose of the negotiation requirement is to make all of the claimants within each fund/subfund aware of each other and to encourage active participation and open

¹ Each year, the claimants to the royalty fees in the Sound Recordings Funds have negotiated a universal settlement agreement among themselves as to the proportionate share that each claimant receives from the subfunds. These agreements have made it unnecessary for the Librarian to convene a CARP and have allowed him to distribute all royalty fees allocated to the Sound Recordings Funds, including those fees allocated to the 1999, 2000 and 2001 Sound Recordings Funds. See Orders, Docket No. 2000-5 DD 99 (June 2, 2000); Docket No. 2001-4 CARP DD 2000 ((May 21, 2001); and Docket No. 2002-6 CARP DD 2001 (July 10, 2002).

² There have been two CARP proceedings to determine the final distribution of the royalty fees in the Musical Works Funds. In 1996, the Librarian convened a CARP to determine the distribution of the 1992, 1993, and 1994 Musical Works Funds, and in 1998, the Librarian convened a second CARP to determine the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds. See 62 FR 6558 (February 12, 1997) and 66 FR 9360 (February 7, 2001), respectively.

discussion on how to resolve each party's claim. The Copyright Office has compiled a list of claimants who have timely filed a claim to either of the two subfunds comprising each of the 1999, 2000, and 2001 Musical Works Funds.³ Claimants must use these lists in negotiating settlement agreements concerning the distribution of the royalty fees.

At the conclusion of the negotiation period, the claimants must submit to the Copyright Office comments identifying the existence of any settlement agreements and the existence of any remaining controversies. Participants must identify each subfund in the Musical Works Funds by year and indicate whether any controversy remains over the distribution of the royalty fees in that subfund or whether an agreement has been reached. In the case of an agreement, the notice must list the name of all claimants covered by the agreement. Participants must advise the Copyright Office of any controversy by the end of the comment period. The Office will not consider controversies which are brought to its attention after the close of the comment period.

Each claimant who intends to participate in the distribution of the [1999, 2000, and 2001]* Musical Works Funds must also file a Notice of Intention to participate. The notice must identify each year and each subfund in which the copyright owner has an interest. Failure to file a timely Notice

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of Intention may preclude a party from participating in the distribution proceeding. These notices are due September 16, 2002.

III. Motion of Phase I Claimants for Partial Distribution

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 1007(c) of the Copyright Act, title 17 of the United States Code. Pursuant to this provision, the American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; The Harry Fox Agency, Inc.; and The Songwriters Guild of America (collectively, the "Settling Parties") submitted a motion to the Copyright Office on June 13, 2002, for a partial distribution of 95% of the Digital Audio Recording Funds Writers and

Publishers Subfunds of 1999, 2000, and 2001 Musical Works royalty funds. The Motion states that the Settling Parties have reached a confidential settlement concerning their respective shares for the 1999, 2000 and 2001 Musical Works Funds.

A claimant who is not a party to the Settling Parties' Motion, but who files a Notice of Intention to Participate, may file a response to the motion no later than the due date set forth in this notice for comments on the existence of controversies and the Notices of Intention to Participate. The Motion of the Settling Parties for Partial Distribution of the 1999, 2000 and 2001 Musical Works Funds is available for inspection and copying in the Office of the General Counsel. The Office will consider the merits of this motion once all interested parties have been identified by the Notices of Intention requested herein and have had an opportunity to file responses to the motion.

IV. Consolidation of Proceedings

The Copyright Office is consolidating the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds into a single proceeding in order to address the merits of the Settling Parties' motion for a partial distribution of funds from the 1999, 2000 and 2001 Musical Works Funds. The Copyright Office has routinely consolidated the consideration of the distribution of the Musical Works Funds for several years into a single proceeding where, as here, the issues regarding the distribution of the royalty fees are the same for each year. The Copyright Office continues this practice because consolidation of the consideration of the distribution of the 1999, 2000 and 2001 Musical Works Funds provides a cost savings to the parties and to the Copyright Office and because it promotes administrative efficiencies.

Dated: July 11, 2002.

Marilyn J. Kretsinger,
Assistant General Counsel.

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³ Copies of the claimant lists are available for viewing and copying between the hours of 8:30 a.m. and 5 p.m. at the: Library of Congress, Copyright Office, Licensing Division, Room LM-458, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20557-6400.

*Corrected text.