



asserted that there were controversies in both the Publishers' and the Writers' Subfunds. Concerning the Sound Recordings Fund, there were settlements in three of the four subfunds; however, for the Featured Recording Artists' Subfund, the Gospel Music Coalition, the Alliance of Artists and Recording Companies, Reachout Records International, Inc. and Copyright Management, Inc. had not reached settlements with one corporation and one individual by the end of the last year.

The Tribunal had established December 1, 1993 as the date by which the parties in controversy would be required to file their written direct cases. However, effective December 17,

1993, Congress passed the Copyright Royalty Tribunal Reform Act of 1993: this legislation dissolved the Tribunal and established a new system of copyright arbitration royalty panels (CARPs) to be supported by the Library of Congress and the Copyright Office.

Before the Act was passed, but in anticipation of it, two requests were made of the Tribunal. The parties to the Musical Works Fund asked the Tribunal to consolidate the 1992 DART distribution proceeding with the 1993 DART distribution proceeding (scheduled to begin in 1994), insofar as it applied to that particular fund. The parties to the Sound Recordings Fund did not join with the request for consolidation, but instead asked the Tribunal for a suspension of the procedural date requiring them to file a written direct case by December 1, 1993.

On November 29, 1993, the Tribunal granted both requests, thus consolidating the 1992 and 1993 Musical Works Fund proceedings and suspending the procedural dates for the 1992 Sound Recording Fund proceeding.

### III. The New CARP System

As we said, Congress dissolved the Copyright Royalty Tribunal and, effective December 17, 1993, established the CARP system in the Library of Congress. As instructed by the Reform Act, the Copyright Office immediately issued a notice adopting the full text of the former Tribunal's rules and regulations on an interim basis. 58 FR 67690 (1993). Then, on January 18, 1994, the Office published

proposed regulations revising the adopted Tribunal rules to adapt them to the requirements of the new CARP system. 59 FR 2550 (1994).

In the January 18, 1994 notice, we stated that we did not consider the Copyright Office to be the successor agency of the Copyright Royalty Tribunal, and that it was Congress' intent to establish an entirely new system. Therefore, the proceedings that the Tribunal had started but not concluded by December 17, 1993 would not be taken up where they had left off, but would be begun anew under the new CARP regime. *Id.* at 2551.

### IV. Purposes of this Notice

The first purpose of this notice is to begin anew the 1992 DART royalty distribution proceeding. We are asking the claimants to provide the Copyright Office, by June 10, 1994, with the following information: (a) whether any controversies exist concerning distribution of 1992 DART royalties; (b) if controversies do exist, the particular subfunds for which they exist; and (c) if settlements have been made, the identity of the parties who have settled and of those who have not.

The second purpose of this notice is to comply with the statutory obligation to begin the 1993 DART distribution proceeding. We are asking the same questions about 1993 DART as we are asking about 1992 DART: whether any controversies exist, for which subfunds, and who are the settled and non-settled parties.

After the existence of any controversies are determined, AHRA gives the Copyright Office 30 days to distribute those royalties not in controversy. In order to make that determination for both the 1992 and 1993 proceedings, we are asking the claimants who report that they are in controversy to state how much is in controversy in each subfund. The information to be provided should include each claimant's asserted percentage or dollar claim to the subfund, and a brief narrative justifying that asserted claim. In addition, we are asking each claimant who expects to be participating in a CARP proceeding to file a Notice of Intent to Participate, as required by 37 C.F.R.

251.43(a).

Third, we are seeking comment as to the advisability of consolidating the 1992 DART and the 1993 DART distribution proceedings. We are aware that the Tribunal granted a request for consolidation filed by the Musical Works Fund claimants. The reasons the claimants cited at the time was that the 1992 fund, which only included royalties collected between October 28 and December 31 of that year, was relatively small, that the amounts in controversy were necessarily even smaller, that the cost of litigating each fund separately would be high in comparison with the size of the funds, and that the 1992 proceeding, being the first of its kind, would be setting important precedent and would benefit from consolidation with the 1993 proceeding. We should like to learn two things: (1) whether the claimants who requested consolidation of the 1992 and 1993 DART Musical Works Fund distributions are adhering to their request; and (2) whether the claimants of the Sound Recordings Fund believe that similar consolidations should be made for that fund.

Fourth, as explained below, we are using this notice to announce three-month delays in meeting two DART deadlines this year: the determination of the existence of controversies and the distribution of DART royalties not in controversy.

### V. DART Deadlines

The AHRA establishes several statutory deadlines to assure the speedy distribution of DART royalties. Claims are to be filed by the last day of February, each year. The existence of any controversies is to be ascertained by March 30. Distribution of royalties not in controversy are to be authorized to be distributed within 30 days of the finding that they were not in controversy—that is, no later than April 29. Under the earlier law, the Tribunal was to conclude all proceedings to resolve any controversies within one year of declaring the existence of those controversies. The abolition of the Tribunal and the establishment of an entirely new CARP system in the Library of Congress has made the meeting of certain statutory deadlines exceedingly difficult and, in at least three cases, virtually impossible.

The Administrative Conference of the

United States has considered the issue of how agencies should respond to circumstances that affect their ability to adhere to schedule, and has issued a series of recommendations concerning statutory time limits. 43 FR 27509 (1978), 1 CFR 305.78-3. The Administrative Conference said:

... it should be recognized that special circumstances, such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations, may justify an agency's failure to act within a predetermined time. An agency's departure from the legislative timetable should be explained in current status reports to affected persons or in a report to Congress.

Id., at para. 4. The Copyright Office finds that good cause exists for not meeting one earlier, and two current statutory deadlines for the distribution of 1992 and 1993 DART royalties.

Under the law in effect before December 17, 1993, the Tribunal was obliged to conclude the 1992 DART distribution proceeding by April, 1994. However, because the Tribunal no longer exists and because the Copyright Office is not the successor agency to the Tribunal, we cannot be bound by the Tribunal's deadlines. We believe that all proceedings started by the Copyright Office are governed by the new provisions of the Copyright Royalty Tribunal Reform Act of 1993, which sets its own statutory time limits on the Library of Congress and the Copyright Office for conducting CARP proceedings.

Our authority to begin DART distribution proceedings is dependent on having the new CARP system in place. That means adopting extensive new rules after full opportunity for the public to comment has been given. It also involves the time-consuming and important process of identifying a pool of potential arbitrators and evaluating their qualifications, ethical eligibility, and availability in consultation with various arbitration associations. We are acting with the utmost speed in all these areas, but it is obvious that these goals cannot be accomplished in time to begin DART distribution proceedings in April, 1994.

We therefore find that a delay of three months is necessary with respect to two DART deadlines. Instead of declaring the existence of any controversies in 1992

and/or 1993 DART distribution by March 30, 1994, we will make such declaration no later than June 30, 1994. Distribution of royalties not in controversy will be authorized on or before August 1, 1994.

Dated: February 22, 1994

**Barbara Ringer,**  
*Acting Register of Copyrights.*

Approved by:  
**James H. Billington,**  
*The Librarian of Congress.*

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