



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

INITIATION OF ARBITRATION

DISTRIBUTION OF 1990, 1991 AND 1992 CABLE ROYALTY FUNDS

The following excerpt is taken from Volume 60, Number 228 of the *Federal Register* for Tuesday, November 28, 1995 (pp. 58680-58681)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94-3 CARP-CD 90-92]

Distribution of 1990, 1991 and 1992 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress

ACTION: Initiation of arbitration.

SUMMARY: The Copyright Office of the Library of Congress is announcing initiation of the 180 day arbitration period for the distribution of 1990-92 cable compulsory license royalties.

EFFECTIVE DATE: December 4, 1995

ADDRESS: All hearings and meetings for the 1990-92 cable distribution proceeding shall take place in the James Madison Memorial Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Acting General Counsel or William Roberts, Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 251.72 of 37 CFR provides: If the Librarian determines that a controversy exists among the claimants to

either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the *Federal Register* a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding. The notice published today fulfills the requirements of §251.72 for the distribution of cable compulsory license royalties for the years 1990-92.

On December 15, 1994, the Copyright Office published a notice in the *Federal Register* requesting comment as to the existence of controversies to the distribution of the 1990 cable royalty fund. 59 FR 64714 (December 15, 1994). In response to this notice, copyright owners identified the existence of controversies for distribution of the 1990 fund, as well as the 1991 and 1992 funds. The copyright owners requested that the Office consolidate the 1990-92 funds into a single distribution proceeding.

On March 21, 1995, the Office published a notice consolidating the 1990-1992 cable royalty funds into a single distribution proceeding, and announced the precontroversy discovery schedule. 60 FR 14971 (March 21, 1995). The Office also announced in that notice that controversies to the 1990-92 cable royalty funds would be declared, and arbitration initiated, on November 17, 1995. 60 FR at 14975.

In order to prepare for the commencement of proceedings, and to afford the cable royalty claimants the full use of the prescribed 180 days for arbitration, the Copyright Office has completed the selection of the arbitrators in accordance with 17 U.S.C. 802. The arbitrators for the 1990-92 cable

distribution proceeding are:

The Honorable Mel R. Jiganti, Chairperson
The Honorable John B. Farmakides
The Honorable Ronald P. Wertheim

These arbitrators have signed their agreements to serve in the proceeding and have, pursuant to agreement by the cable claimants, begun background work in preparation for the commencement of the proceeding.

II. Joint Motion to Defer Commencement

On November 8, 1995, the parties to the proceeding filed a joint motion requesting a delay in the initiation of proceedings to December 29, 1995. They cited as their reasons: the time needed to produce the volume of discovery documents their motions to compel have generated; the time needed to evaluate the data contained in those discovery documents; the time needed to amend their direct cases in response to the granting of JSC's motion to add an additional issue to the proceeding; the potential for additional motions to be filed if discovery documents are not furnished as ordered; the difficulty of scheduling witnesses during the holidays and the loss of working days due to the holidays; the concern that the 180 day period will not be sufficient unless actual testimony begins on the heels of the initiation of the proceeding after all preliminary matters have been resolved; and a desire to have the mechanics of paying the arbitrators worked out before the initiation of proceedings.

The Copyright Office partially granted the joint motion to allow a delay to December 4, 1995, of the initiation of the 1990-92 cable royalty distribution

proceeding in an Order dated November 13, 1995. *See* Order in Docket No. 94-3 CARP-CD 90-92 (November 13, 1995). In issuing its ruling, the Office noted in the Order that it engaged the services of the arbitrators on the basis of a starting date the parties themselves agreed to last spring and that any extension of the starting date would require amending the arbitrator's contracts and consideration of their loss of time to do other work. The Office therefore concluded that the six week delay requested by the parties would work a hardship on it and the arbitrators and decided that a December 4 commencement date was more appropriate. *Id.*

III. Initiation of Proceeding

Pursuant to §251.72 of the CARP rules, the Copyright Office of the Library of Congress is formally announcing the existence of Phase I controversies to the distribution of cable compulsory license royalties for 1990, 1991 and 1992, and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve the distribution of those funds. The arbitration proceeding commences on December 4, 1995, and runs for a period of 180 days, by which time the arbitrators shall make their report to the Librarian of Congress by June 1, 1996 in accordance with §251.53 of the rules.

A meeting between the copyright claimants participating in the distribution proceeding and the

arbitrators shall take place at 10 a.m. on Monday, December 4, 1995, at the above described address to discuss the hearing schedule, arbitrator billing and payment, and any other necessary procedural matters. The meeting is open to the public. Copies of the hearing schedule, once finalized, will be available at the Copyright Office upon request.

Date: November 21, 1995

Marybeth Peters,
Register of Copyrights.

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

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