



ANNOUNCEMENT

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

ANNOUNCEMENT OF THE SCHEDULE FOR THE PROCEEDING.

DETERMINATION OF STATUTORY LICENSE RATES AND TERMS FOR CERTAIN DIGITAL SUBSCRIPTION TRANSMISSIONS OF SOUND RECORDINGS

The following excerpt is taken from Volume 62, Number 116 of the *Federal Register* for Tuesday, June 17, 1997 (p. 32829-32830)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-5 CARP DSTRA]

Determination of Statutory License Rates and Terms for Certain Digital Subscription Transmissions of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180 day arbitration period for determining the rates and terms for certain digital subscription transmissions of sound recordings, as required by the regulations governing this proceeding.

EFFECTIVE DATE: June 17, 1997.

ADDRESSES: All hearings and meetings for the determination of the royalty fees for certain digital subscription transmissions of sound recordings shall take place in the James Madison Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR ADDITIONAL INFORMATION: Nanette Petruzzelli, Acting General Counsel, or Tanya Sandros, Attorney Advisor, at 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:

Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels, 37 CFR subchapter B, provides that:

At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the *Federal Register* at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and places of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of §251.11(b) for the proceeding to determine the rates and terms for transmissions of sound recordings by certain digital subscription services.

On August 2, 1996, the Library announced the precontroversy discovery period for this docket and requested interested parties to file Notices of Intent to Participate. 61 FR 40464 (August 2, 1996). On October 11, 1996, Digital Cable Radio Associates and Muzak, L.P. filed a motion to suspend the proceeding, which DMX, Inc. joined on October 15, 1996. These three parties are collectively referred to as the "Subscription Services" throughout this notice. The Subscription Services requested the suspension pending the resolution of their motion to compel document production. On November 27, 1996, the Office denied the motion to suspend the proceeding, but in recognition that the precontroversy schedule was already in a de facto state of suspension due to the Subscription Services' refusal to exchange documents, the Office adopted a new schedule. See Order in Docket No. 96-5 CARP DSTRA (November 27, 1996). In a subsequent order, the Office notified the parties that the 180 day arbitration period

would commence on June 2, 1997. See Order in Docket No. 96-5 CARP DSTRA (March 28, 1997). Then on June 2, 1997, the Office published a *Federal Register* notice announcing the names of the arbitrators and the initiation of the 180 day period. 62 FR 29742 (June 2, 1997).

On June 3, 1997, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule for this proceeding. At that meeting, the parties agreed to present their cases in two phases. Phase I will address the proposed royalty rates and phase II will address the terms associated with those rates. The schedule for the proceeding is as follows:

Opening Remarks for all parties June 9, 1997

• Presentation of Direct Cases (Phase I):
Recording Industry Association of America (RIAA) June 9, 1997
—Jay Berman, Hilary Rosen

RIAA June 10, 1997
—Zachary Horowitz, Gary Morris, James Trautman

RIAA June 11
—Barry Massarsky, Larry Gerbrandt

RIAA June 12
—David Wilkofsky

Subscription Services:

• Digital Cable Radio Associates June 16, 1997
—David J. Beccaro, W. Barry McCarthy, Jr.

—Lou Simon June 17, 1997

DMX, Inc. June 17, 1997

—Jerold H. Rubinstein, Douglas G. Talley

Muzak June 18, 1997

—Bruce B. Funkhouser

Joint witness June 19, 1997

—John R. Woodbury, Ph.D.

• Presentation of Direct Cases (Phase II): June 30, 1997

(witness list is not available for Phase II at this time)

July 1, 1997
July 3, 1997

- Presentation of Rebuttal Cases: July 26 - 31, 1997
- Close of 180 day period November 28, 1997

Dated: June 11, 1997

Marybeth Peters,
Register of Copyrights.

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During this proceeding, the Subscription Services plan to present evidence submitted under a protective order issued by the Librarian of Congress. See Recommendation and Order in Docket No. 96-5 CARP DSTR (September 18, 1996). In anticipation of the need to close portions of these meetings, the Subscription Services filed a motion on June 6, 1997, requesting the CARP to close the meetings scheduled for June 9, 11, 12, and June 16 - 20, 1997, because various expert witnesses and representatives of the Subscription Services expect to discuss substantial amounts of confidential and trade secret information on these days. The arbitrators considered the motion on June 9, 1997, before hearing the opening statements, and voted to close the meetings pursuant to their authority under 37 CFR 251.13(d). This provision allows a CARP to close its meetings "[i]f the matter involves privileged or confidential trade secrets or financial information." The record of the vote to close the meetings is as follows:

The Hon. Lenore Ehrig, Chairperson — Yes
The Hon. Thomas A. Fortkort — Yes
The Hon. Sharon T. Nelson — Yes

The regulations require that the Copyright Office publish the original schedule for the CARP proceeding in the *Federal Register* at least seven calendar days in advance of the first meeting. 37 CFR 251.11(b). Pursuant to 37 CFR 251.11(d), however, the arbitrators voted to publish the schedule on shorter notice than the required seven days in order to maximize the allotted time to hear the evidence and write their report. The results of the vote on the question, whether the requirement for a seven calendar day notice should be waived, are:

The Hon. Lenore Ehrig, Chairperson — Yes
The Hon. Thomas A. Fortkort — Yes
The Hon. Sharon T. Nelson — Yes

At this time, the Office does not have a list of any additional persons expected to attend the closed meetings, but the Office will provide this information to any party, upon request, when it becomes available. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).