



ANNOUNCEMENT

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

ANNOUNCEMENT OF THE SCHEDULE FOR THE PROCEEDING.

DETERMINATION OF THE DISTRIBUTION OF THE 1991 CABLE ROYALTIES IN THE MUSIC CLAIMANTS CATEGORY

The following excerpt is taken from Volume 62, Number 189 of the
Federal Register for Tuesday, September 30, 1997 (p. 51162-51163)

LIBRARY OF CONGRESS

Copyright Office

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

Determination of the Distribution of the 1991 Cable Royalties in the Music Claimants Category

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 the Copyright Arbitration
Royalty Panel (CARP) proceeding that
shall determine the distribution of the
cable royalty fees in the Music Claimants
category which were collected for
secondary transmissions of broadcast
signals during 1991 pursuant to a
compulsory license.

DATES: Filings must be submitted
according to the announced schedule,
except as otherwise provided by order of
the Copyright Arbitration Royalty Panel.

ADDRESSES: Parties shall deliver an
original and five copies of all written
filings concerning this proceeding to:
Office of the Copyright General Counsel,
James Madison Memorial Building,
Room 403, First and Independence
Avenue, S.E., Washington, D.C. 20540.

FOR ADDITIONAL INFORMATION:

William Roberts, Senior Attorney, 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. (202) 707-8380. Telefax (202)
707-8366.

SUPPLEMENTARY INFORMATION:

A. Background

On February 15, 1996, the Library of
Congress published a notice requesting
interested parties to comment on the
existence of Phase II controversies for the
distribution of the 1990, 1991, and 1992
cable royalty funds. 61 FR 6040 (February
15, 1996). The parties who filed
comments and Notices of Intent to
Participate identified two unsettled
categories that would require resolution
before a CARP. The first controversy,
between James Cannings and Broadcast
Music, Inc., the American Society of
Composers, Authors and Publishers, and
SESAC, Inc. (collectively, "the Music
Claimants"), concerns the distribution of
the 1991 royalty funds in the Music
Claimants category and is the subject of
the current proceeding. The second
controversy, however, between the
National Association of Broadcasters
(NAB) and the Public Broadcasting
Service (PBS), has been resolved through
further negotiation. On June 3, 1997,
NAB and PBS notified the Copyright
Office that they had reached settlement
concerning all matters related to their
Phase II dispute over the distribution of
the 1990-1992 royalty funds, leaving a
single dispute for resolution by a CARP.

The parties in the remaining
controversy conducted precontroversy
discovery according to the schedule
which the Register of Copyrights
established by order for this 45-day
period. See Order in Docket No.

94-3 CRP CD 90-92 (February 14, 1997),
vacated and reset at the request of the
Music Claimants, Order in Docket No.
94-3 CARP CD 90-92 (May 21, 1997).
Then, on August 28, 1997, the Copyright
Office published a notice initiating the
180 day period for this proceeding. 62 FR
45687 (August 28, 1997). In this notice,
the Office also announced September
4, 1997, as the date of the first meeting
between the arbitration panel and the
parties. However, due to scheduling
conflicts, the parties agreed to reschedule
the meeting for September 10, 1997. The
Office further announced that it would
publish a schedule of the proceedings,
as required by 37 CFR 251.11(b), when it
became available.

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 tele-
phone number of the person to contact for
further information.

This notice fulfills those requirements
of Sec. 251.11(b) for the proceeding to
determine the distribution of the 1991
cable royalty fees in the Music Claimants
category.

B. The Schedule

On September 10, 1997, the parties to
this proceeding met with the arbitrators

for the purpose of setting a schedule and discussing the procedural aspects of this proceeding. A key procedural issue before the panel which required action by the panel at the outset of the proceeding was consideration of the issue designated to the CARP by the Register of Copyrights of whether to suspend formal hearings and make the determination as to the distribution of the 1991 cable royalty fees on the written pleadings. See Order in Docket No. CARP CD 90-92 (August 15, 1997). After hearing argument from all parties, the panel announced its decision to waive the requirement of oral evidentiary hearings and proceed upon the written record alone. The panel stated its reasons for this decision and the specifics of the agreed upon schedule for the proceeding in a written order, as follows:

Upon consideration of the issue designated to the CARP by the Register of Copyrights of whether to suspend formal hearings and decide the controversy as to the Phase II distribution of the 1991 cable royalty fund on the written pleadings, and after hearing the arguments of all parties, the Panel has determined that for good cause shown it is in the public interest to waive the requirement of an oral evidentiary hearing and to proceed on the written pleadings along, provided that those pleadings are supplemented by written rebuttal cases, proposed findings of fact and conclusions of law, and reply findings of fact and conclusions of law.

Accordingly, and with the consent of all parties, the following procedural schedule is hereby established:

1. Mr. Cannings will provide to BMI by September 17, 1997, his request for a sample of WWOR-TV music cue sheets for 1991, as granted by Ruling No. 3 in the Register's Order dated August 15, 1997.

2. BMI will make such sample cue sheets available to Mr. Cannings for inspection and copying on or before October 1, 1997.

3. Written rebuttal cases are to be filed on October 30, 1997. Any study or analysis shall be accompanied by the information specified in Rule Sec. 251.48 (e) and (f), and all underlying data and tabulations shall be made available as discovery that same date to opposing parties. No other discovery will be allowed.

4. Any motions addressed to rebuttal cases shall be filed on November 7, 1997. Responses shall be filed on November 19, 1997, and any replies on November 26, 1997.

5. Proposed findings of fact and conclusions of law are to be filed December 5, 1997.

6. Reply findings of fact and conclusions of law are to be filed December 19, 1997.

Order, Docket No 94-3 CARP CD 90-92 (September 16, 1997).

At this time, the parties have not moved to close any portion of the proceeding to the public. 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).

Dated: September 25, 1997.
Nanette Petruzzelli,
Acting General Counsel.

[FR Doc. 97-25890 Filed 9-29-97; 8:45 am]

BILLING CODE 1410-33-M