



ANNOUNCEMENT

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

NOTICE OF PROPOSED RULEMAKING..

NOTICE AND RECORDKEEPING FOR SUBSCRIPTION DIGITAL TRANSMISSIONS

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99-5]

Notice and Recordkeeping for Subscription Digital Transmissions

AGENCY: Copyright Office, Library of
Congress

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend the regulation that requires the filing of an initial notice of digital transmissions of sound recordings under statutory license with the Copyright Office to adjust for changes brought about by the passage of the Digital Millennium Copyright Act of 1998.

DATES: Comments are due September 3, 1999.

ADDRESSES: An original and ten copies of the comments shall be delivered to: Office of General Counsel, Copyright Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000, or mailed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION

CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Act in Sound Recordings Act of 1995 ("DPRA"), Public Law 104-39, 109 Stat. 336 (1995). The DPRA gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission. 17 U.S.C. 106(6). The new right, however, was subject to certain limitations, including exemptions for certain digital transmissions, 17 U.S.C. 114(d)(1), and the creation of a statutory license for nonexempt digital subscription services. 17 U.S.C. 114(d)(2).

The statutory license requires adherence to regulations under which copyright owners may receive reasonable notice of use of their sound recordings under the statutory license, and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2). On May 13, 1996, the Copyright Office initiated a rulemaking proceeding to promulgate regulations to govern the notice and recordkeeping requirements. 61 FR 22004 (May 13, 1996). This rulemaking concluded with the issuance of interim rules to govern the filing of an initial notice of digital transmissions of sound recordings under statutory license, 37 CFR 201.35, and the filing of reports of use of sound recordings under statutory license, 37 CFR 201.36. See 63 FR 34289 (June 24, 1998).

At the time these regulations were announced, only three noninteractive, nonsubscription, digital transmissions services (DMX, Inc., Digital Cable Radio Associates/Music Choice, and Muzak, Inc.) were in operation and considered eligible for the license. Consequently, the Office prescribed a period for filing initial notices such that all existing services, which were already operating in accordance with the section 114 license, had to submit their

notices within 45 days of the effective date of the regulation. Section 201.35(f) reads, in part, as follows: "A Service shall file the Initial Notice with the Licensing Division of the Copyright Office prior to the first transmission of sound

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recordings under the license, *or within 45 days of the effective date of this regulation.*" (Emphasis added).

Subsequently, the President signed into law the Digital Millennium Copyright Act of 1998 ("DMCA"). Among other things, the DMCA expanded the section 114 compulsory license to allow a nonexempt, eligible nonsubscription transmission service and a pre-existing satellite digital audio radio service to perform publicly a sound recording by means of certain digital audio transmissions, subject to notice and recordkeeping requirements. 17 U.S.C. 114(f).

The notice and recordkeeping requirements found in Secs. 201.35 and 201.36 would appear to apply to any service eligible for the section 114 license, including those newly eligible to use the license under the amended provisions of the license. However, these regulations provide no opportunity for a newly eligible nonsubscription transmission service which was in service prior to the passage of the DMCA to make a timely filing of its initial notice of transmission.

Therefore, the Copyright Office is proposing an amendment to Sec. 201.35(f) which would extend the period for filing the initial notice to October 15, 1999, in order to allow the eligible nonsubscription services which were in operation prior to the passage of the DMCA an opportunity to file their initial notice timely. Comments on the extension of the filing period must be filed

with the Copyright Office by September 3, 1999.

The Office also recognizes that Sec. 201.36, which prescribes rules detailing how services shall notify copyright owners of the use of their sound recordings, what to include in that notice, and how to maintain and make available such records, does not apply to those services newly eligible for the section 114 license under the DMCA. Currently, Sec. 201.36(c) requires "Reports of Use [to] be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement . . . , or by decision of a Copyright Arbitration Royalty Panel . . . , or by an order of the Librarian" At this time, no collective has been designated in accordance with any of the methods enumerated in Sec. 201.36(c) for the purpose of collecting royalty fees from the newly eligible services, nor have any rates or terms been set for the use of the license by these services. See 63 FR 65555 (November 27, 1998). The newly eligible services and the interested copyright owners, however, continue negotiations to reach industry-wide agreement on rates and terms for the expanded section 114 license. In deference to these negotiations, the Office will refrain from initiating at this time a rulemaking proceeding to consider amendments to the recordkeeping regulations.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress which is part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendment would not have a significant economic impact on a substantial number of small entities that would require provision of special relief for small entities. The proposed amendment is designed to minimize any significant economic impact on small entities.

List of Subjects in 37 CFR Part 201 Copyright.

Proposed Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is proposed to be amended as follows:

PART 201--GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.35(f) is amended by removing the phrase "or within 45 days of

the effective date of this regulation." and adding in its place "or by October 15, 1999."

Dated: July 30, 1999.
Marybeth Peters,
Register of Copyrights.

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