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


The following excerpt is taken from Volume 65, Number 130 of the Federal Register of Thursday, July 6, 2000 (pp. 41737-41738).

LIBRARY OF CONGRESS
Copyright Office

[Docket No. 99-3 CARP DD 95-98]


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 to determine the distribution of the 1995-98 digital audio recording technology (“DART”) royalties in the Musical Works Funds.

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

ADDRESSES: If hand delivered, 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, First and Independence Avenue, SE., Room LM-403, Washington, DC 20540. If sent by mail, filings should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (“CARP”), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:
A. Background


On September 21, 1999, the Office issued an Order announcing the precontroversy discovery schedule for the proceeding, beginning on November 15, 1999. See Order in Docket No. 99-3 CARP DD 95-98 (September 21, 1999). Prior to commencement of the 45-day precontroversy discovery period, the Office was notified that Cannings and DeMonbrun had settled their respective controversies with the Settling Parties. Thus, the parties who will appear before the CARP in the current proceeding are the Settling Parties, Evelyn, and Curry.

The September 21, 1999, Order also set the initiation of the arbitration for February 28, 2000. However, the Office’s duty to publish every two years a new list of arbitrators eligible to serve on a CARP rendered the February 28 initiation date unworkable. See 37 CFR 251.3. On January 14, 2000, in accordance with Sec. 251.3(b), the Office published the list of arbitrators eligible to serve on a CARP initiated during 2000 and 2001. 65 FR 2439 (January 14, 2000). Because the time period between the publication of the arbitrator list and the February 28 initiation date was not sufficient to complete the selection of arbitrators for this proceeding, the Office reset the initiation of the arbitration to April 10, 2000. See Order in Docket No. 99-3 CARP DD 95-98 (March 14, 2000).

On April 10, 2000, the Office published a notice initiating the 180-day arbitration period for this proceeding. 65 FR 19025 (April 10, 2000). Once the arbitrators for this proceeding were selected, the Office scheduled the initial meeting between the arbitrators and the parties for May 16, 2000. However, the chairperson of the panel resigned out of concern that potential conflicts of interest, which were not known to the arbitrator at the time of selection, may exist under Sec. 251.32. Because of these concerns, the Copyright Office canceled the May 16, 2000, meeting between the parties and the original panel of arbitrators. Pursuant to Sec. 251.6(f), the remaining two arbitrators selected a new chairperson. On June 14, 2000, in accordance with Sec. 251.6(f), the Office announced the suspension of the 180-day arbitration period from May 16, 2000, to June 16, 2000, the resumption of the 180-day period on June 16, 2000, the new chairperson of the panel, and the time and place of the rescheduled initial meeting, which took place on June 19, 2000. See 65 FR 37412 (June 14, 2000).

B. The Schedule

Section 251.11(b) of 37 CFR provides: “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

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least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place 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.”
All meetings of the CARP are open to the public, unless otherwise specified. To ensure that the public receives adequate notice of such meetings, the rule requires that the Office publish a schedule of the meetings at least seven days before the first meeting. See 59 FR 2550 (January 18, 1994). As set forth below, there are no further meetings for this proceeding scheduled at this time; thus, the seven-day advance publication requirement is unnecessary in this instance. Accordingly, this notice fulfills the requirements of Sec. 251.11(b) for the proceeding to determine the distribution of the 1995-98 DART royalties in the Musical Works Funds.

On June 19, 2000, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule and discussing the procedural aspects of this proceeding. The key procedural issue before the Panel at the outset of the proceeding was the consideration of the issue designated to the CARP of whether to suspend formal hearings and make the determination as to the distribution of the 1995-98 DART royalties in the Musical Works Funds on the written pleadings. See Order in Docket No. 99-3 CARP DD 95-98 (December 22, 1999). After hearing argument from all parties, the Panel announced its decision to waive the requirement of oral evidentiary hearings and to proceed upon the written record alone. The Panel stated in its Order that the following schedule would govern the remainder of the proceeding:

- Deadline for submission of any revision desired at this time of a party’s claim, pursuant to Sec. 251.43(d): July 7, 2000.
- Deadline for submission of any rebuttal case desired by a party: July 28, 2000.
- Deadline for submission of findings of fact and conclusions of law and proposed orders, including specific calculations of royalty payments: August 18, 2000.
- Deadline for submission of reply findings of fact and conclusions of law and proposed orders: August 28, 2000.

Order in Docket No. 99-3 CARP DD 95-98 (June 19, 2000).

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 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).


David O. Carson,
General Counsel.