



ANNOUNCEMENT

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

REQUEST FOR NOTICES OF INTENT TO PARTICIPATE AND WRITTEN COMMENTS ON SCHEDULING

DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS

The following excerpt is taken from Volume 67, Number 224 of the *Federal Register* of Wednesday, November 20, 2002 (pp. 70093-70094)

LIBRARY OF CONGRESS

Copyright Office
[Docket No. 2002-1 CARP DTRA3]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for notices of intent to participate and written comments on scheduling.

SUMMARY: The Copyright Office of the Library of Congress is requesting written comments and proposals for the scheduling of Copyright Arbitration Royalty Panel (CARP) proceedings to adjust royalty rates and terms under provisions of the Copyright Act governing ephemeral recordings and digital transmissions of performances of sound recordings, as well as notices of intent to participate in the CARP to set rates and terms under the statutory license for eligible nonsubscription services to make certain digital audio transmissions of sound recordings for the 2003-2004 period.

DATES: Notices of intent to participate are due on or before December 23, 2002. Comments and proposals for the scheduling of the CARP proceedings are due on or before December 2, 2002.

ADDRESSES: An original and five copies of notices of intent to participate, and written comments and proposals on scheduling, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Wil-

liam Roberts, 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: Section 112 and section 114 of the Copyright Act create statutory licenses for eligible non-subscription services to make certain digital audio transmissions of sound recordings. The Library of Congress recently conducted a CARP proceeding which produced the royalty rates and terms for these licenses applicable to eligible nonsubscription services for the period from October 28, 1998, to December 31, 2002. *See* 67 FR 45239 (July 8, 2002). On January 30, 2002, the Library published a notice initiating a six-month voluntary negotiation period to adjust the rates and terms for the 2003-2004 period. 67 FR 4472 (January 30, 2002). No settlements were reached and the Library received a petition to initiate a CARP proceeding. Consequently, the Library is directing interested parties that wish to participate in the CARP proceeding to submit their notices of intent to participate on or before December 23, 2002. Parties should be mindful of this deadline as failure to submit a timely notice may preclude their participation in the proceeding.

The Library must also schedule this CARP proceeding. However, before a schedule can be determined, other proceedings under the section 112 and 114 licenses must be considered. Currently, there are three CARP proceedings for sections 112 and 114 that the Library must schedule in the upcoming months: (1) A proceeding to adjust the terms and rates for preexisting subscription services and to establish rates and terms for preexisting satellite digital audio services; (2) a proceeding to establish rates and terms for new subscription services; and (3) a proceeding to adjust rates and terms for nonsubscription services. Adding to the complications associated with scheduling three proceedings under the

same two statutory licenses¹ is the fact that several of the parties affected by the outcomes will appear in all three proceedings. This can result in these parties, and their counsel, litigating more than one proceeding at a time. In the past, the Library has attempted to avoid such a scenario by scheduling proceedings sufficiently far apart. However, if the Library were to continue this practice, CARP proceedings would not be concluded until on or after the period in which the rates and terms established in that proceeding have expired. For example, the Library must schedule a proceeding for nonsubscription services for the 2003-2004 period. The parties in the preexisting subscription service/preexisting satellite digital audio service proceeding have petitioned the Library to postpone the start of that proceeding until March 20, 2003. If the Library grants their motion, the Librarian's decision setting forth rates and terms for preexisting subscription services and preexisting satellite digital audio services will not be issued until the end of 2003. Based on past practice, the Library would then have to wait several months after that to permit parties participating in both proceedings to prepare their cases for the nonsubscription service proceeding. The end result would be that a final determination in the nonsubscription service proceeding would not be made until the end of 2004 or the beginning of 2005. And this does not take into account the scheduling of the proceeding for new subscription services.

It is the position of the Library that CARP proceedings to establish or adjust royalty rates for statutory licenses should be, to the extent possible, scheduled so that final rates and terms are announced by the beginning of the time period to which they are applicable. Users of a statutory license should not be forced to use the license without knowing what the royalty obligations will be for the period prescribed by the license. This goal cannot be met if the section 112 and 114 CARPs

¹ This does not consider the CARP proceedings for other statutory licenses in the Copyright Act that must also be scheduled during the same time period.

[[Page 70094]]

are scheduled to run *seriatim*; serious consideration must be given to running multiple CARPs concurrently. To that end, the Library is requesting the parties in this proceeding to propose, in written comments on or before December 2, 2002, solutions to the problems identified above in scheduling three CARP proceedings for the section 112 and 114 statutory licenses.

Dated: November 15, 2002.

David O. Carson,
General Counsel.

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