

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notices of intent to participate.

SUMMARY: The Library of Congress is requesting that those parties interested in participating in a Copyright Arbitration Royalty Panel ("CARP") proceeding for establishing rates and terms for digital phonorecord deliveries file a Notice of Intent to Participate. Those parties who have already filed such a notice need not file again.

DATES: Notices of Intent to Participate are due July 31, 1998.

ADDRESSES: Notices of Intent to Participate, when 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, Copyright Office, James Madison Memorial Building, Room LM-407, First and Independence Avenues, SE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Facsimile: (202) 707-8366.

SUPPLEMENTARY INFORMATION:**Background**

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 ("Digital Performance Act"). Public Law 104-39, 109 Stat. 336. Among other things, it confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a "digital phonorecord delivery." 17 U.S.C. 115(c)(3)(A). A "digital phonorecord delivery" is defined as each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. * * * 17 U.S.C. 115(d).

The Digital Performance Act established that the rate for all digital

phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, is the same rate in effect for the making and distribution of physical phonorecords. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a process that may take two-steps for determining the terms and rates. 17 U.S.C. 115(c)(3)(A)(ii). The first step in the process is a voluntary negotiation period initiated by the Librarian of Congress to enable copyright owners and users of the section 115 digital phonorecord delivery license to negotiate the terms and rates of the license. The Librarian initiated this period on July 17, 1996, and directed it to end on December 31, 1996. 61 FR 37213 (July 17, 1996).

The second step of the process is the convening of a CARP to determine reasonable terms and rates for digital phonorecord deliveries for parties not subject to a negotiated agreement. In the July 17, 1996, **Federal Register** notice, the Library stated that CARP proceedings would begin, in accordance with the rules of 37 CFR part 251, on January 31, 1997. 61 FR 37214 (July 17, 1996). The Library also directed those parties not subject to a negotiated agreement to file their petitions to convene a CARP, as required by 17 U.S.C. 115(c)(3)(D), by January 10, 1997, and their Notices of Intent to Participate in CARP proceedings by January 17, 1997. *Id.* In addition, the Library directed interested parties to comment by November 8, 1996, on the possibility of consolidating the CARP proceeding to determine terms and rates for digital phonorecord deliveries with the proceeding to adjust the mechanical royalty rate for the making and distributing of physical phonorecords. 61 FR 37215 (July 17, 1996).

On November 8, 1996, the Library received a joint motion from the Recording Industry Association of America ("RIAA"), the National Music Publishers' Association, Inc. ("NMPA"), and The Harry Fox Agency, Inc. ("Harry Fox") to vacate the scheduled dates appearing in the July 17, 1996, **Federal Register** notice for convening a CARP. The Library vacated the schedule on December 11, 1996, and established a new precontroversy discovery schedule and date for the filing of Notices of Intent to Participate. 61 FR 65243 (December 11, 1996).

After publication of the new schedule, representatives of the RIAA, NMPA and Harry Fox informed the Library that terms and rates for digital phonorecord

deliveries could be negotiated through voluntary agreement, and requested that the Library vacate the new schedule to allow sufficient time for such negotiations. The Library vacated the new schedule on February 3, 1997. 62 FR 5057 (February 3, 1997). The parties did reach a voluntary agreement and, pursuant to the rules, the Library published the proposed rates and terms for digital phonorecord deliveries for public comment. 62 FR 63506 (December 1, 1997). In that notice of proposed rulemaking, the Library specified that any party that objected to the proposed rates and terms was required to file a Notice of Intent to Participate and was expected to fully participate in a CARP proceeding. 62 FR 63507 (December 1, 1997). However, the Library did not call for the filing of Notices of Intent to Participate by parties other than those who objected to the proposed rates and terms.

Two parties, the United States Telephone Association ("USTA") and the Coalition of Internet Webcasters ("Webcasters"), opposed the proposed terms and rates and filed Notices of Intent to Participate. A third party, Broadcast Music, Inc. ("BMI"), also filed a Notice of Intent to Participate in the event that a CARP takes place. BMI's interest is the relationship between digital phonorecord deliveries and the public performance right.

Notices of Intent To Participate

The parties in this proceeding continue to negotiate in an effort to reach agreement as to the terms and rates for digital phonorecord deliveries. In the event that a CARP becomes necessary, participating parties must be identified. Because earlier deadlines for the filing of Notices of Intent to Participate were vacated at the parties' request, Notices have yet to be filed in this proceeding, save those filed by USTA, Webcasters and BMI. Consequently, the Library is instructing those parties (other than USTA, Webcasters and BMI) who wish to participate in a CARP proceeding to establish rates and terms for digital phonorecord deliveries to file a Notice of Intent to Participate by July 31, 1998.

Dated: June 24, 1998.

David O. Carson,
General Counsel.

[FR Doc. 98-17478 Filed 6-30-98; 8:45 am]

BILLING CODE 1410-33-U