§ 251.32 Financial disclosure statement.

(a) Within 45 days of their nomination, each nominated arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to §251.31.

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except—

(1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or

(2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:

(i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of §251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;

(ii) Such list shall be included in an order issued no later than the commencement of the 45-day precontroversy discovery period;

(iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.

(iv) Any party to the proceeding for which the listed arbitrator is being considered may interpose within the 45-day period described in §251.45(b) an objection to that arbitrator being selected. If the objection is raised to a matter found to be within the scope of §251.31, the objection will serve automatically to disqualify the arbitrator.

If the objection is raised to a matter found to be outside the scope of §251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are no changes in the arbitrator’s financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of §251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest—

(1) During the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel’s report to the Librarian, and

(2) If the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.


§ 251.33 Ex parte communications.

(a) Communications with Librarian or Register. No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition