

§ 251.48

(i) The CARP shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the CARP and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(l) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination of any given witness. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination of any given witness, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the ques-

37 CFR Ch. II (7-1-10 Edition)

tioning of other parties within the group.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 63 FR 30635, June 5, 1998]

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or

economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of the characteristics which were measured and counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 63 FR 30635, June 5, 1998]

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, that no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]