

SUBCHAPTER B—COPYRIGHT ROYALTY JUDGES RULES AND PROCEDURES

PART 350—GENERAL ADMINISTRATIVE PROVISIONS

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AUTHORITY: 17 U.S.C. 803.

SOURCE: 70 FR 30905, May 31, 2005, unless otherwise noted.

§ 350.1 Scope.

This subchapter governs procedures generally applicable to proceedings before the Copyright Royalty Judges in making determinations and adjustments pursuant to the Copyright Act, 17 U.S.C. 801(b).

[70 FR 30905, May 31, 2005, as amended at 71 FR 53327, Sept. 11, 2006]

§ 350.2 Representation.

Individual parties in proceedings before the Judges may represent themselves or be represented by an attorney. All other parties must be represented by an attorney. Cf. Rule 49(c)(11) of the Rules of the District of Columbia Court of Appeals. The appearance of an attorney on behalf of any party constitutes a representation that the attorney is a member of the bar, in one or more states, in good standing.

[71 FR 53327, Sept. 11, 2006]

§ 350.3 Caption required.

All pleadings and documents filed in a proceeding before the Copyright Royalty Judges must be identified in a caption that identifies the proceeding by caption and docket number.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53327, Sept. 11, 2006]

§ 350.4 Filing and service.

(a) *Filing of pleadings.* For all filings, the submitting party shall deliver an original, five paper copies, and one electronic copy in Portable Document

Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette to the Copyright Royalty Board in accordance with the provisions set forth in § 301.2 of this chapter. In no case shall a party tender any document by facsimile transmission, except with the prior express authorization of the Copyright Royalty Judges.

(b) *Exhibits.* All exhibits must be included with the pleadings they support. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Copyright Royalty Judges may reduce the number of required copies.

(c) *English language translations.* Each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription*—(1) *Parties represented by counsel.* The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's full name, mailing address, e-mail address (if any), telephone number, facsimile number (if any), and a state bar identification number. Submissions signed by an attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(i) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(ii) The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(2) *Parties representing themselves.* The original of all documents filed by a party not represented by counsel shall be signed by that party and list that party's full name, mailing address, e-mail address (if any), telephone number, and facsimile number (if any). The signature will constitute the party's certification that, to the best of his or her knowledge and belief, there is good ground to support the document, and that it has not been interposed for purposes of delay.

(f) *Oppositions and replies.* Oppositions to motions shall be filed within five business days of the filing of the motion, and replies to oppositions shall be filed within four business days of the filing of the opposition.

(g) *Service list.* The Copyright Royalty Judges will compile and distribute, to those parties who have filed a petition to participate that has been accepted by the Copyright Royalty Judges, the official service list of the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Copyright Royalty Judges and all parties of any change in the name or address to which service shall be made.

(h) *Service method.* During the course of a proceeding, each party must serve all motions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed. If a party is willing to accept service of a document

electronically (*i.e.*, by e-mail), followed by a hard copy, first-class mail of the hard copy may be used in lieu of express mail or other expedited delivery.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53327, Sept. 11, 2006; 71 FR 59010, Oct. 6, 2006]

§ 350.5 Time.

(a) *Computation.* To compute the due date for filing and serving any document or performing any other act directed by an order of the Copyright Royalty Judges or the Copyright Royalty Judges' rules:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or a day on which the weather or other conditions render the Copyright Royalty Board's office inaccessible.

(4) As used in this rule, "legal holiday" means the date designated for the observance of New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President or the Congress.

(b) *Extensions.* A party seeking an extension must do so by written motion. Prior to filing such a motion, a party must attempt to obtain consent from the other parties to the proceeding. An extension motion must state:

(1) The date on which the action or submission is due;

(2) The length of the extension sought;

(3) The date on which the action or submission would be due if the extension were allowed;

(4) The reason or reasons why there is good cause for the delay;

(5) The justification for the amount of additional time being sought; and

(6) The attempts that have been made to obtain consent from the other