be outsourced. However, even if a function is deemed to be a commercial activity, its outsourcing is impermissible if it creates a *de facto* employer-employee relationship between government and contract employees. A *de facto* employer-employee relationship, where contract employees are under the direction, supervision, and evaluation of government employees, but without merit system protections, would circumvent the Federal merit system requirements. In this case, the *de facto* employer-employee relationship would serve to achieve in a backhanded manner that which could not be achieved otherwise: performance of the work by *de facto* government employees *without* merit system protections. This would undermine the very basis for requiring merit system protections in the first place, and is, therefore, impermissible.

Conversely, under no circumstances may governmental employees be under the direction and control of contract employees. If governmental employees are subject to direction, supervision, and evaluation by contract personnel, the chain of governmental responsibility to the public would be broken. In this case, the contractor, who is not accountable to the public, would exert major influence over the employees, rather than government officials who are directly accountable to the public.

OPM has advised the Department that the existence of a *de facto* employer-employee relationship, in the context of government contractors, is determined under the Federal common law test (as opposed to the State law tests) for determining the existence of an employer-employee relationship. The determination whether an employer-employee relationship exists must be made on a case-by-case basis. Federal regulations defining the employer-employee relationship are found at 26 CFR Section 31.3306(i)–1.

(2) *Functions, even if commercial activities, may not be outsourced if they can be performed in a more cost effective manner by the government.* As noted above, Section 303(a)(8), SSA, requires that a State's law provide for the expenditure of all moneys received by the State under Section 302, SSA, ''solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration'' of the State's UC law. If a UC function can be performed more efficiently and cost effectively by the Government than by a contractor, outsourcing of the function, even if it is a commercial activity, would be inconsistent with Section 303(a)(8), SSA, as it would not constitute ''efficient administration'' of the State's UC law.

(3) *Outsourcing may not be used to circumvent personnel or salary ceilings.* OMB Circular A–76 (Revised) states that the circular shall not be used to justify the outsourcing of functions solely to avoid personnel ceilings or salary limitations. In applying this principle to the States, if such ceilings or limitations exist, granted funds must be used in a manner consistent with the ceilings or limitations in order to insure the ''proper administration'' of the State's law under Section 303(a)(8), SSA.

6. *Frequently Asked Questions.* While developing this directive, the Department received several questions concerning its contents. The following Questions and Answers respond to questions which have not already been addressed.

Q. States frequently hire additional staff to handle temporary workload increases. These staff are let go when the workload decreases. In some cases, these staff may be retirees who return to work. Are these actions inconsistent with merit-staffing?

A. The Department recognizes that it is necessary on occasion to bring on temporary employees to handle temporary workload increases. To ensure that these temporary employees are competent to perform the tasks for which they are hired, they must have been hired through a merit system. If a retiree was hired and trained under a merit system in the first place, the merit system requirement is maintained. No issue is created when these temporary employees are laid-off due to a workload reduction.

Q. Members of Boards of Review which administer the second level of appeals are not required to be merit-staffed. Why is this so? May the higher appeals authority be outsourced?

A. The higher appeals authority may not be outsourced as it performs an inherently governmental function that requires discretion in applying Government authority or the making of value judgements in making decisions for the Government. However, the Department has long held that Boards of Review need not be merit-staffed. Boards exist to provide an independent analysis of, and ensure consistency of, first-level appeals decisions. Board members typically represent both employer and employee interests and as such are chosen for their representation of those groups. This position was stated as early as 1963 in Section 0595(B), Part I, of the *Employment Security Manual.* (This section is now obsolete.)

7. *Action Required.* Administrators are requested to provide this information to the appropriate staff. States should take appropriate action to assure that they meet the requirements of Federal law as explained by this UIPL.

8. *Inquiries.* Questions concerning the outsourcing of UC functions should be directed to the appropriate Regional Office.

9. *Attachments.* OMB Circular No. A–76 (Revised) and OFPP Policy Letter 92–1.

Note: The attachments, both of which have been published in the **Federal Register** previously, are not being published again. They can be obtained in electronic format at the following URL addresses.

OMB Circular No. A–76—*http://www.whitehouse.gov/OMB/circulars/a076/a076.html*

OFFP Policy Letter 92–1—*http://www.arnet.gov/References/Policy__Letters/PL92–1.html*

[FR Doc. 01–513 Filed 1–8–01; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–1 CARP DSTRA2]

Adjustment of Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of negotiation period and request for notification.

SUMMARY: The Copyright Office of the Library of Congress is announcing the 6-month negotiation period for the adjustment of royalty rates and terms for the public performance of copyrighted sound recordings by preexisting subscription services and preexisting satellite digital audio radio services. The Office is also requesting those parties participating in the negotiations to so notify the Office.

DATES: The 6-month negotiation period commences on January 9, 2001. Notification of participation in the negotiation period is due by January 31, 2001.

ADDRESSES: An original and five copies of notification of participation in the settlement negotiations may be hand delivered to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty

Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Since 1995, copyright owners of sound recordings have enjoyed an exclusive right to perform publicly their copyrighted works by means of a digital audio transmission, subject to certain limitations. 17 U.S.C. 106(6). Among the initial limitations placed on the performance of a sound recording was the creation of a statutory license for performances made by nonexempt, noninteractive, digital subscription services. 17 U.S.C. 114 (1995).

After receipt of a petition from the Recording Industry Association of America (''RIAA''), the Librarian of Congress conducted a CARP proceeding to establish rates and terms for the statutory license. The eligible subscription services that participated in that proceeding were Digital Cable Radio Associates, Digital Music Express, Inc. and Muzak, L.P. The Librarian issued a final determination of rates and terms, which was appealed by the RIAA. 63 FR 25394 (May 8, 1998). The U.S. Court of Appeals for the District of Columbia Circuit affirmed the rates, but remanded the matter of certain payment terms to the Library for further proceedings. *Recording Industry Ass'n of America* v. *Librarian of Congress*, 176 F.3d 528 (D.C. Cir. 1999). The remand has yet to be resolved.

In 1998, as part of the amendments made by the Digital Millennium Copyright Act (''DMCA''), the section 114 statutory license was expanded, and a new schedule for rate adjustment proceedings was established. For subscription services in existence prior to passage of the DMCA (defined as ''pre-existing subscription services''), and for satellite digital audio radio services in existence prior to passage of the DMCA (defined as ''pre-existing satellite digital audio radio services''), the Librarian of Congress is required to announce a 6-month negotiation period in the first week of January 2001 for purposes of promoting settlement of the terms and rates of the statutory license. 17 U.S.C. 114(f)(1)(C)(i)(II). This notice fulfills that requirement.

Announcement of Negotiation Period

Pursuant to section 114(f)(1)(C)(i), the Librarian of Congress is announcing a 6-month negotiation period for the settlement of rates and terms for the statutory license for preexisting subscription services and preexisting satellite digital audio radio services. If the 6-month negotiation period fails to yield a full settlement, interested parties must petition the Librarian for a CARP proceeding during the period commencing on July 1, 2001, and ending August 29, 2001. 17 U.S.C. 114(f)(1)(C)(ii)(II).

Request for Notification

In order to facilitate productive settlement discussions during the negotiation period, and to facilitate complete settlement, see 65 FR 10564 (February 20, 2000), it is useful to create a list of parties that wish to participate in the negotiation period. The list should be in a centralized location and available to the public so that interested parties may identify each other and begin their settlement discussions. Consequently, the Library is requesting that those parties wishing to participate in the 6-month negotiation period file notification with the Copyright Office by January 31, 2000.

The list compiled by the Copyright Office is solely for informational purposes and is on a voluntary basis. In other words, parties that wish to participate in the negotiation period are not required to file notification and may file notification with the Office at any time after the January 31, 2001, deadline up until the end of the negotiation period. The notification is not a Notice of Intent to Participate in a CARP proceeding, because, as provided in 17 U.S.C. 114(f)(1)(B), the Library cannot begin a CARP proceeding until petitioned to do so after the end of the negotiation period. If the Library receives such a petition, it will call for Notices of Intent to Participate at a later date.

Dated: January 4, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01–581 Filed 1–8–01; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before February 8, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 12, 2000 (65 FR 60692 and 60693). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–NEW.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 5,200.