

§ 917.16 [Amended]

3. Section 917.16 is amended by removing and reserving paragraph (c) (3).

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LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 259**

[Docket No. 2002-3 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to a serious disruption in the delivery of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2001. In order to ensure that their claims are timely received, claimants are encouraged to file their DART claims electronically or by fax, utilizing the special procedures described in this Notice.

EFFECTIVE DATE: February 5, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540. Submissions by electronic mail should be made to "dartclaims@loc.gov"; see

SUPPLEMENTARY INFORMATION for other information about electronic filing. Submissions by facsimile should be sent to (202) 252-3423. If sent by mail, an original and two copies of each claim should be addressed 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 Gina Giuffreda, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:**Background**

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products

in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed "[d]uring the first 2 months of each calendar year" with the Librarian of Congress "in such form and manner as the Librarian of Congress shall prescribe by regulation." 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February¹ or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.² 37 CFR 259.5(e). However, the regulations do not provide for the filing of DART claims by alternative methods such as electronic submission or facsimile transmission; and until now, the Office has perceived no need for alternative methods in filing these claims.

Unfortunately, recent events, namely the concerns about anthrax in the United States Postal Service facilities in the District of Columbia, have caused severe disruptions of postal service to the Office since October 17, 2001. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). Such

¹ In those years where the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims must be received by the first business day in March. 37 CFR 259.5(b).

² Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

disruptions continue and will most likely worsen in the coming weeks, since all incoming mail will be diverted to an off-site location for treatment. Consequently, in light of these disruptions, the Office is offering and recommending alternative methods for the filing of DART claims to the 2001 royalty funds. The alternative methods set forth in this document apply only to the filing of DART claims for the 2001 royalties which are due by February 28, 2002, and in no way apply to other filings with the Office.

This document covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2001

Claims to the 2001 DART royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their DART claims, the Office strongly encourages claimants to personally deliver their claims by 5 p.m. E.S.T. on February 28, 2002, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers are subject to treatment at the off-site facility before being delivered to the Office and will be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on February 28, 2002. Thus, claims should be hand delivered by the claimant or a representative of the claimant (i.e., the claimant's attorney or a member of the attorney's staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR part 259.

b. Electronic Submission

Claimants may submit their claims via electronic mail as file attachments, and such submissions should be sent to "dartclaims@loc.gov." The Office has devised forms for both single and joint DART claims, which are posted on its website at <http://www.loc.gov/copyright/forms/dart>. Claimants filing their claims electronically must use these and only these forms, and the forms must be sent in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word

Version 10.0 or earlier, or in WordPerfect 9 or earlier. Claims sent as attachments using formats other than those specified in this Notice will not be accepted by the Office. Likewise, claims sent as text messages, and not as attachments, will also be rejected by the Office.

When filing claims electronically, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

Claims filed by electronic mail must be received by the Office no later than 11:59 p.m. E.S.T. on February 28, 2002. Specifically, the electronic message must be received in the Office's server by that time. Any claim received after that time will be considered as untimely filed. Therefore, claimants submitting their claims via electronic mail are strongly encouraged to send their claim no later than February 27, 2002, in order to better ensure timely receipt by the Office.

c. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252-3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2002. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 apply with the exception of § 259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

d. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after the last day in February. In the event there is a

question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

However, concerns about possible anthrax contamination of the mail have resulted in the imminent treatment of all mail coming to the Copyright Office. In the near future, all Copyright Office mail will be sent to an off-site facility for treatment, including irradiation. Although it is not possible at this time to determine the length of time needed to complete this process, the delay could be significant. In addition, it is not known what, if any, damage will be caused to the mail as a result of treatment.

Given these uncertainties, claimants are strongly urged not to use the mail as a means of filing their claims to the 2001 DART royalties. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, or at all, and/or that the mail, when received by the Office, will be significantly damaged. Claims sent by mail should be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after February 28, 2002, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

If a claimant has deposited his or her claim in the mail prior to the publication of this Notice, the claimant is encouraged to also use one of the alternative methods of filing described herein in order to better ensure that their claim will be received by the Office in a timely fashion.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2001

DART royalties. The Office is not, and indeed cannot, waive the statutory deadline for the filing of DART claims. See, *United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2002.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the recent anthrax scare constitutes a special—indeed, an extraordinary—circumstance which has forced the Office to deviate from its usual mail processing procedures. Specifically, all incoming mail will be sent to an off-site location for treatment before being delivered to the Office. This process will delay the Office's receipt of its mail; however, the actual length of this delay is not known at this time. In addition, it is unknown at this time the degree to which the integrity of treated mail will be compromised. Thus, given such uncertainties, the Office believes that the public interest will best be served by waiving, for this filing period only, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed electronically.

Because the Office is discouraging claimants from filing their claims through the mail due to the uncertainties surrounding the mail treatment process, the public interest would not be served if the Office required DART claimants to provide original signatures on their claims for this filing period and disallowed filing by facsimile because claimants would then be limited to filing their claims by the two options currently available—hand delivery and U.S. mail. Thus, the only way claimants could ensure timely filing of their claims would be to hand deliver them to the Office. Those claimants for whom personal delivery of their claims is not feasible would be placed at an unfair disadvantage.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after February 28, 2002. See *Locke*, supra. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in

order to assist them in timely filing their claims. By allowing claims to be filed by electronic mail and facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Again, this waiver applies only to the filing of DART claims to the 2001 royalties which must be filed by February 28, 2002. Once the mail treatment process is operational, the Office may need to reexamine its regulations governing any filing coming into the Office. However, such reexamination, if necessary, will take place at a future date.

Dated: February 1, 2002.

David O. Carson,

General Counsel.

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POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule implements legislative changes to the semipostal stamp program. The amendments to Postal Service regulations involve the duration of the program, pricing, and responsibility for tracking costs.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (202) 268-6555.

SUPPLEMENTARY INFORMATION:

The Semipostal Authorization Act, Public Law No. 106-253, 114 Stat. 634 (2000), authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The differential between the price of a semipostal stamp and the First-Class Mail® service rate, less an offset for the reasonable costs of the Postal Service, consists of an amount to fund causes that the "Postal Service determines to be in the national public interest and appropriate." By law, revenue from sales (net of postage and the reasonable costs of the Postal Service) is to be transferred to selected executive agencies within the meaning of 5 U.S.C. § 105.

After soliciting public comment on proposed rules, on June 12, 2001, the Postal Service published a final rule establishing the regulations for the Semipostal Stamp Program. On November 12, 2001, Public Law No. 107-67, 115 Stat. 514 (2001), was enacted. Public Law No. 107-67 extends the sales period of the *Breast Cancer*

Research stamp until December 31, 2003, and provides that the Postal Service must issue two additional semipostal stamps, to which selected provisions of 39 U.S.C. 416 apply. The first is a semipostal stamp to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001. The *Heroes* semipostal stamp is to be issued as soon as practicable and may remain on sale through December 31, 2004. Funds raised in connection with this semipostal stamp are to be transferred to the Federal Emergency Management Agency.

The second is a semipostal stamp to fund domestic violence programs. The *Domestic Violence* semipostal stamp is to be issued as soon as practicable, but no later than the beginning of 2004, and may remain on sale through December 31, 2006. Funds raised in connection with this stamp are to be transferred to the U.S. Department of Health and Human Services.

To implement Public Law No. 107-67, the Postal Service is revising its regulations governing the Semipostal Stamp Program. In particular, 39 CFR 551.6 is revised to incorporate the new pricing formula for semipostal stamps issued under authority of 39 U.S.C. 416. This includes not only semipostal stamps issued by the Postal Service under its discretionary authority, but also the *Heroes* and *Domestic Violence* semipostal stamps. The new pricing formula provides that the differential, i.e., the difference between the purchase price and the postage value, must be at least 15 percent of the postage value of the semipostal stamp, and the price must be divisible by five. Section 551.6 is accordingly revised to reflect the change in the pricing formula.

Public Law No. 107-67 provides that both the *Heroes* and *Domestic Violence* semipostal stamps are not subject to any limitation prescribed by the Postal Service "relating to whether more than one semipostal may be offered for sale at the same time." The Postal Service notes that 39 CFR 551.5(a) establishes a limit of one semipostal stamp issued at one time. In light of the specific exceptions listed in Public Law No. 107-67, the Postal Service interprets this limitation to extend only to semipostal stamps issued under the Postal Service's discretionary program. Hence, the Postal Service submits that it is unnecessary to promulgate a substantive change to 39 CFR 551.5, although the section is revised to refer to the enactment of Public Law No. 107-67.

Finally, several nonsubstantive changes are made to Part 551 to incorporate the enactment of Public Law No. 107-67 and to reflect organizational changes within the Postal Service. Specifically, in 39 CFR 551.1 reference is made to Public Law No. 107-67. Sections 551.1 and 551.8 are revised to reflect a new organizational unit name for the Office of Finance, with responsibilities related to semipostal stamps. In addition, § 551.8(b) is amended to include the sharing of responsibility for selecting comparable stamps between the Offices of Accounting, Finance, Controller and the Office of Stamp Services.

The Postal Service hereby adopts the following revisions to the *Code of Federal Regulations*.

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service hereby amends 39 CFR Part 551 as follows:

PART 551—[AMENDED]

1. The authority citation for 39 CFR part 551 is revised to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 416, and the Semipostal Authorization Act, Pub. L. 106-253, 114 Stat. 634 (2000), as amended by Pub. L. 107-67, section 652, 115 Stat. 514 (2001).

2. Revise § 551.1 to read as follows:

§ 551.1 Semipostal Stamp Program.

The Semipostal Stamp Program is established under the Semipostal Authorization Act, Public Law 106-253, 114 Stat. 634 (2000), as amended by Public Law 107-67, section 652, 115 Stat. 514 (2001). The Office of Stamp Services has primary responsibility for administering the Semipostal Stamp Program. The Office of Accounting, Finance, Controller has primary responsibility for the financial aspects of the Semipostal Stamp Program.

3. Amend § 551.5 by revising paragraph (a) to read as follows:

§ 551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a 10-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The 10-year period will commence after the sales period of the *Breast Cancer Research* stamp is concluded in accordance with the Stamp Out Breast Cancer Act, and as amended by the Semipostal Authorization Act, the Breast Cancer Research Stamp Act of 2001, and Public Law 107-67, section 650, 115 Stat. 514.