

Signed in Washington, DC, this 5th day of June, 2003.

**Paul Zurawski,**

*Deputy Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 03-14700 Filed 6-10-03; 8:45 am]

**BILLING CODE 4510-29-M**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Working Group on Health Care Security Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, June 25, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study health care security.

The session will take place in Room N-4437 C-D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 4 p.m., is for Working Group members to hear testimony from witnesses about the relative merits of defined contribution and self-insured health plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies before June 18, 2003 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives or organizations wishing to address the working group should contact the Executive Secretary by mail or call (202) 693-8668 before June 18. Oral presentatives should be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by mail or phone before June 18.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary before June 18. Papers received after that date will not be included in the record of the meeting.

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## LIBRARY OF CONGRESS

### Copyright Office

#### Notification of Agreement Under the Small Webcaster Settlement Act of 2002

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of agreement.

**SUMMARY:** The Copyright Office is publishing an agreement which sets rates and terms for the reproduction and performance of sound recordings made by a noncommercial webcaster under the section 112 and 114 statutory licenses. Noncommercial webcasters who meet the eligibility requirements may choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreement published herein rather than the rates and terms adopted by the Librarian of Congress in an earlier proceeding.

**FOR FURTHER INFORMATION CONTACT:**

Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423. See the final paragraph of the **SUPPLEMENTARY INFORMATION** for information on where to direct questions regarding the rates and terms set forth in the agreement.

**SUPPLEMENTARY INFORMATION:**

#### Background

In 1998, Congress amended the Copyright Act, title 17 of the United States Code, to make clear that an eligible nonsubscription service may publicly perform copyrighted sound recordings by means of digital audio transmissions under a statutory license, 17 U.S.C. 114, provided that the service pays the appropriate royalty fee and complies with the terms of the license. At the same time, Congress created a second statutory license, 17 U.S.C. 112(e), to allow for the making of ephemeral reproductions for the purpose of facilitating the digital audio transmissions made by the nonsubscription services under the section 114 license. Rates and terms for both licenses were set after a hearing

before a copyright arbitration royalty panel ("CARP"). See 67 FR 45239 (July 8, 2002). However, some small webcasters, including some noncommercial webcasters, did not participate in that proceeding and expressed reservations about the fee structure adopted through that process.

In response to those concerns, Congress passed the Small Webcaster Settlement Act of 2002 ("SWSA"), Pub. L. 107-321, 116 Stat. 2780, amending the section 112 and section 114 statutory licenses as they relate to small commercial webcasters and noncommercial webcasters. Specifically, the SWSA authorizes SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc. and the Receiving Agent designated by the Librarian of Congress in the initial rate setting proceeding, to enter into agreements on behalf of all copyright owners and performers for the purpose of establishing an alternative payment structure for small commercial webcasters<sup>1</sup> and noncommercial webcasters<sup>2</sup> operating under the section 112 and section 114 statutory licenses.

The rates and terms set forth in such agreements apply only to the time periods specified in the agreement and have no precedential value in any proceeding concerned with the setting of rates and terms for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings. To make this point clear, Congress included language expressly addressing the precedential value of such agreements. Specifically, section 114(f)(5)(C), as added by the SWSA, states that:

Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the

<sup>1</sup> SoundExchange and small commercial webcasters negotiated such an agreement and submitted it to the Copyright Office for publication in December, 2002. See 67 FR 78510 (December 24, 2002).

<sup>2</sup> For purposes of the SWSA, a "noncommercial webcaster" is defined as a webcaster that: (1) is exempt from taxation under section 501 of the Internal Revenue Code of 1986, 26 U.S.C. 501; (2) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or (3) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes. 17 U.S.C. 114(f)(5)(E).