

(d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

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[FR Doc. 03-25472 Filed 10-7-03; 8:45 am]

BILLING CODE 7565-01-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002-1D]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is requesting public comment on the adoption of regulations for records of use of sound recordings performed pursuant to the statutory license for public performances of sound recordings by means of digital audio transmissions between October 28, 1998, and the effective date of soon-to-be-announced interim regulations.

DATES: Comments are due no later than November 24, 2003. Reply comments are due no later than December 22, 2003.

ADDRESSES: An original and five copies of any comment or reply comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20559-6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024-0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone:

(202) 707-8380; Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio, business establishment and new subscription services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio, business establishment and new subscription services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, report to copyright owners of sound recordings on the use of their works. Both licenses direct the Librarian of Congress to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The purpose of the exchange of data is to ensure that the royalties collected under the statutory licenses are distributed to the correct recipients.

The Copyright Office will soon be publishing interim regulations setting forth the categories of information that services making use of sound recordings under the statutory licenses must report. Those interim regulations will require services to identify performances of sound recordings that they transmit pursuant to the statutory license, providing information such as the titles of sound recordings that are transmitted, the names of the recording artists, etc. However, the interim regulations will be prospective in nature, meaning that they will not apply to the period from October 28, 1998, to the effective date of the interim rules. Consequently, there are currently no regulations establishing the requirements for creating and

reporting records of use for this earlier time period.¹ While it is certain that many services have maintained few or, in many instances, no records of prior uses, a mechanism must be adopted to account for the performances that occurred during this period in order to distribute the royalty fees collected during this period. Thus, we seek public comment as to the form and content such regulations should take.

Request for Comment

Incomplete and absent records create serious difficulties for the Copyright Office in fashioning regulations that apply to prior uses of sound recordings. If only partial prior records of use are reported, and if only some services are able to submit such reports, the data gathered from those records is likely to skew the royalty distribution process. How should the Office address this problem? Should the Office require licensees to report actual performance data for the historical period, if available; and if so, what elements should be reported, bearing in mind that the information provided must be sufficient to identify the copyright owners and performers who are the beneficiaries of these licenses? What, if any, proxies may be used in lieu of incomplete or missing prior records? Are there costs associated with using proxies, and if so, who should bear the cost of obtaining use of these proxies?

The Copyright Office seeks answers to these questions and encourages interested parties to consider the costs and benefits to both the licensees and the copyright owners when formulating a mechanism for accounting for past performances. In particular, we seek concrete proposals and proposed regulatory language to implement rules for the reporting of prior records of use. Services and copyright owners are encouraged to explore the possibility of joint submissions of comments that represent consensus among interested parties.

Dated: October 3, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03-25523 Filed 10-7-03; 8:45 am]

BILLING CODE 1410-33-P

¹ There is one exception. Regulations, codified at 37 CFR 201.36, are already in place for preexisting subscription services, *i.e.*, subscription services in existence before July 31, 1998. See 17 U.S.C. 114(j)(11); see also 67 FR 5791 (February 7, 2002). This notice of inquiry seeks comments on requirements for records of use for all types of services operating under the section 114 statutory license except preexisting subscription services.