

Creek, at mile 0.4, at Annapolis, MD, to remain in the closed-to-navigation position each day from 10 p.m. to 5 a.m. beginning July 6, 2005, through August 31, 2005.

Dated: May 20, 2005.

**Waverly W. Gregory, Jr.,**

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05-10694 Filed 5-27-05; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Chapter III

[Docket No. RM 2005-1]

#### Procedural Regulations for the Copyright Royalty Board

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Procedural regulations with request for comments.

**SUMMARY:** The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board of the Library of Congress, is issuing these regulations, governing the organization, administration, and procedures of the Board, for immediate use in proceedings that are subject to the jurisdiction of Copyright Royalty Judges. Public comments are sought on these regulations.

**DATES:** These regulations are effective on May 31, 2005.

Written comments should be received no later than June 30, 2005. Reply comments should be received no later than July 21, 2005.

**ADDRESSES:** If hand delivered by a private party, an original and five copies of comments and reply comments must be brought to Room LM-401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), an original and five copies of comments and reply comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows:

Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments and reply comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Comments and reply comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

**FOR FURTHER INFORMATION CONTACT:**

William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (the "Reform Act"), Public Law 108-419, 118 Stat. 2341. This Act, which becomes effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code with respect to the administration of the various statutory copyright licenses, phasing out the Copyright Arbitration Royalty Panel ("CARP") system and replacing the arbitrators with three permanent Copyright Royalty Judges.<sup>1</sup>

Statutory licenses, sometimes referred to as "compulsory" licenses, enable a person to use copyrighted materials unilaterally, without contractual permission of the owners of the materials; so long as the user complies with applicable reporting and royalty payment obligations, such uses are not infringements of the owners' copyright. The first statutory license, created in 1909, allowed manufacturers of piano rolls to use copyrighted nondramatic musical works; the license fee was set by Congress in the statute. See, *Recording Industry Ass'n v. Copyright Royalty Tribunal*, 662 F.2d 1 (D.C. Cir. 1981). In 1976, as part of major revisions to the Copyright Act, Congress greatly enlarged the regime for statutory licenses, reflecting the development of

<sup>1</sup> Under the Act, the Copyright Royalty Judges will conduct proceedings to " \* \* \* make determinations and adjustments of reasonable terms and rates of royalty payments as provided in [Copyright Act] sections 112(e), 114, 115, 116, 118, 119 and 1004," "to make determinations concerning the adjustment of the copyright royalty rates under [Copyright Act] section 111," to authorize distributions under sections 111, 119, and 1007 of the Act, and "[t]o determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010." See 17 U.S.C. 801(b).

new communications industries and media. Henceforth, the rates for the statutory licenses would be adjusted by administrative decision. And, in those instances where the statutory license fees would be paid into royalty pools (as opposed to payments made directly to copyright owners), the 1976 amendments to the Copyright Act set up administrative proceedings to adjudicate distribution disputes. See, *Christian Broadcasting Network, Inc. v. Copyright Royalty Tribunal*, 720 F.2d 1295, 1300 (D.C. Cir. 1983).

Finding the right administrative structure to set rates and make distributions for the expanded array of statutory licenses has proven problematic. Initially, Congress established a stand-alone administrative agency—the former Copyright Royalty Tribunal—to perform these tasks. However, "there was insufficient work to justify the existence of a permanent body \* \* \* " *National Ass'n of Broadcasters v. Librarian of Congress*, 146 F.3d 907, 912 (D.C. Cir. 1998). Next, in 1993, Congress transferred the ratemaking and distribution functions to the Library of Congress. In cases where the parties could not reach agreement, the controversies would be referred to an *ad hoc* CARP. The CARP decisions were then reviewed by the Librarian for possible arbitrariness. *Id.* at 912-13. But the CARP system presented perceived problems of continuity, consistency, and expense.

Under the Reform Act, three permanent Copyright Royalty Judges will be appointed by the Librarian of Congress to encourage settlements and, when necessary, resolve statutory license disputes. The expectation is that the Copyright Royalty Judges, appointed to staggered, six-year terms, will provide greater decisional stability, yielding the advantages of the former Copyright Royalty Tribunal, but with greater efficiency and expertise. On February 7, 2005, the Librarian of Congress appointed an interim Chief Copyright Royalty Judge and the Copyright Royalty Board ("CRB" or "Board") was subsequently established within the Library of Congress to house the Copyright Royalty Judges.

These regulations implement the requirement of section 803(b)(6)(A) of the Copyright Act<sup>2</sup> that directs the Copyright Royalty Judges to "issue regulations to govern [their] proceedings" within 120 days of their

<sup>2</sup> Unless otherwise noted, all references are to Chapter 8 of title 17 of the United States Code as in effect on May 31, 2005.

appointment.<sup>3</sup> Congress did not intend for these regulations to be issued as “proposed rules” or “interim regulations.”<sup>4</sup> Hence, unless amended, these regulations will be used in the copyright statutory license proceedings conducted by the Copyright Royalty Judges under the Reform Act.<sup>5</sup> Nevertheless, comments are sought at this time to identify the need for prompt correction of any errors and to inform the incoming, permanent Copyright Royalty Judges as to any need for further rulemaking proceedings.

The Reform Act prescribes, to an exceptionally detailed degree, the procedures that must be adopted for use in proceedings before the Copyright Royalty Judges. These regulations track those statutory requirements. Also, these regulations are often drawn from the procedural regulations used by the Copyright Office for the conduct of CARP proceedings. However, interested persons are encouraged to carefully scrutinize these regulations, as these CRB regulations do depart from the CARP procedural regulations in a number of instances. Comments are sought especially to identify any possible, inadvertent inconsistencies between these regulations and the requirements of the Copyright Act. Any comments that would bring to the Board’s attention areas where further procedural guidance would be helpful, or where these regulations have created unnecessary burdens, would be most welcome.

The following items may be of particular interest:

Reservation of Copyright Act Legal Issues to the Register of Copyrights. A distinctive feature of the adjudicative regime set up by the Reform Act is its formal division of fact and copyright law determinations.

Under the Reform Act, Copyright Royalty Judges are guaranteed “full independence in making determinations concerning adjustments and

determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title \* \* \*” 17 U.S.C. 802(f)(1)(A)(i). These findings, determinations, and rulings of the Copyright Royalty Judges are not reviewable, at the administrative level, by any other official. The final determinations of the Copyright Royalty Judges will go directly to the court for judicial review, when sought. 17 U.S.C. 803(d).<sup>6</sup>

At the same time, the Reform Act reserves to the Register of Copyrights control over Copyright Act interpretive policy. The Register “may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges.” 17 U.S.C. 802(f)(1)(D). The statute also provides for referrals of significant Copyright Act interpretive issues to the Register, prior to a final determination, during the course of ongoing Copyright Royalty Judge proceedings. Referral of a “material question of substantive law \* \* \*” is discretionary, something one or more of the presiding Copyright Royalty Judges “may request \* \* \*” 17 U.S.C. 802(f)(1)(A) (emphasis added), on their motion or on the motion of a participant in a proceeding. But, if the material question of substantive law is a “novel” one, “the Copyright Royalty Judges shall request a decision of the Register of Copyrights.” 17 U.S.C. 802(f)(1)(B) (emphasis added). These regulations provide procedures for the discretionary and mandatory interlocutory referrals.

The Reform Act anticipates possible instances where a determination of the Copyright Royalty Judges is perceived by the Register of Copyrights to be inconsistent with the Register’s interpretation of the Copyright Act, but

their decision has become final and is judicially reviewable. 17 U.S.C. 802(f)(1)(D). This would be a most undesirable situation for all concerned. These procedural regulations seek to minimize the likelihood of such an event by attempting to identify referable “material questions” at the earliest possible stage of the proceedings and by encouraging orderly interlocutory referrals. Public comments suggesting how these regulations might further reduce the likelihood of post-decision disputes are particularly invited.

More generally, the regulations implementing section 802(f) are intended to insure that the manifest, plenary authority of the Register of Copyrights to control interpretations of the Copyright Act is fully honored, while averting avoidable interruptions and delays in ongoing proceedings. Comments are sought on any possible refinements to these regulations that would better meet these goals.

**Petitions to Participate.**  
**Content.** The Copyright Arbitration Royalty Panel regulations do not specify the content of a notice of intent to participate. It has been the practice of the Copyright Office to require, in the request for notices of intent to participate, the claimant’s full name, address, telephone number, facsimile number (if any), and e-mail address (if any); the phase or phases of the proceeding that were involved, if applicable;<sup>7</sup> and a statement of intent to fully participate. See, *Ascertainment of Controversy for the 2002 Cable Royalty Funds*, 69 FR 44548, 44549 (July 26, 2004). The Board is codifying this *de minimis* information requirement in its regulations.

In addition, the Copyright Act now stipulates that a person must have a “significant interest” in order to participate “in the proceeding.” 17 U.S.C. 803(b)(2)(C). The Act does not define a “significant interest”; it is a term of art that had been used in the CARP program to screen petitions. See, 37 CFR 251.62. In past practice, the Copyright Office has required a putative participant to show some financial stake in the outcome of the proceeding in order to present a “significant interest.” The regulations adopted herewith, § 351.1(b)(1), simply carry forward the statutory language, without further elaboration. Comments are invited on whether the Board’s regulations should be amended to include more specific guidelines on “significant interest.”

<sup>7</sup> For an explanation of the two phases in cable and satellite royalty pool distribution proceedings, see, e.g., *Distribution of 1998 and 1999 Cable Royalty Funds*, 69 FR 3606, 3607 (January 26, 2004).

<sup>3</sup> Subsection (a) of section 6 of the Reform Act, the “effective date and transition provisions,” required the appointment of one or more interim Copyright Royalty Judges, within 90 days of enactment, to perform the functions of the permanent Copyright Royalty Judges until they are appointed.

<sup>4</sup> See Copyright Act section 803(b)(6)(B), directing that the CARP regulations will serve as the “interim regulations” for the Copyright Royalty Judges until the regulations under subparagraph (A) are adopted.

<sup>5</sup> Ongoing proceedings that are being conducted under the CARP system regulations, 37 CFR Part 251, will continue to use those regulations. Similarly, the existing substantive provisions for compulsory license rates and distributions, 37 CFR Parts 253–256, 258, and 260–262, will remain in effect, as codified in Chapter II, until superceded by the decisions and regulations of the Copyright Royalty Judges pursuant to the Reform Act.

<sup>6</sup> This “full[y] independent[t]” role is very different from that of a typical, federal administrative law judge (ALJ) rendering recommended decisions for an agency. Compare, e.g., 46 CFR 502.227(a)(6) (Federal Maritime Commission retains plenary authority to override decision of the ALJ); 30 U.S.C. 823(d)(2)(A)(ii)(I) (ALJ’s unsupported factual decision is reversible by Federal Mine Safety and Health Review Commission); 5 CFR 2423.41(b) (Federal Labor Relations Authority has unrestricted authority to reject ALJ’s decision “[w]hen exceptions are filed”); 10 CFR 2.341 (Nuclear Regulatory Commission retains discretion to review ALJ decisions for clear error); Model Adjudication Rules, Administrative Conference of the U.S., Rule 410, 11 T.M. Cooley L. Rev. 75 (1994) (recommending retention of plenary authority to review factual findings).

Late Petitions. Section 351.1(d) of the regulations indicates that the Copyright Royalty Judges may accept late-filed petitions to participate in a proceeding, "for substantial good cause shown, and if there is no prejudice to the participants that have already filed petitions \* \* \*." This language is essentially lifted from the Reform Act, 17 U.S.C. 803(b)(1)(A)(ii). It is acknowledged that this statutory language poses some ambiguities. Presumably, "substantial good cause" requires a stronger showing than mere "good cause" and, in context, "prejudice" probably relates to some impairment of a party's ability to proceed, not merely the diminution of that party's potential recovery.

The regulations, however, do not further flesh out these terms, leaving resolution of the potential issues they raise to be resolved by the Copyright Royalty Board in future proceedings. Comments are invited as to whether some further guidance could or should be placed into the regulatory language.

Filing Fees. Under section 803(b)(2)(A) of the Copyright Act, a party seeking to participate in a royalty fund distribution proceeding must pay a filing fee of \$150. That filing fee requirement is waived, however, if "the contested amount of the claim is \$10,000 or less \* \* \*." *Id.*, section 803(b)(4)(A). While the intent of this provision is quite clear, how it would be implemented is not. A claimant to a royalty pool does not necessarily know the value of the claim when it is submitted and cannot know the "contested amount" until competing claims are weighed, after discovery and voluntary negotiations. Accordingly, the regulations will ask the claimants to withhold their fee payments if they believe the "contested amount" of their claim will be \$10,000 or less. Under the regulations, § 351.1(b)(4), the Copyright Royalty Board will require payment of the filing fee at such time it appears that the "contested amount of the claim" will exceed \$10,000. Persons who believe that they are possibly going to be entitled to a filing fee waiver should therefore delay submission of the \$150 filing fees. It is not practicable for the Board to refund an erroneously paid fee.

Paper Proceedings. A problem of copyright statutory license program administration has been to provide access to the adjudicative process to persons with relatively small copyright royalty claims while, at the same time, not allowing small claimants to unfairly exploit settlement leverage by unreasonably prolonging proceedings. An important provision of the Reform Act, addressing this problem, is section

803(b)(5), directing the Copyright Royalty Judges to resolve some controversies solely on a written record, without live testimony, in cases where there "is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure \* \* \*." 17 U.S.C. 803(b)(5)(A).

The statute also gives the Copyright Royalty Judges broad discretion to impose paper proceedings "under such other circumstances as the Copyright Royalty Judges consider appropriate." 17 U.S.C. 803(b)(5)(B). This provision would apply in situations where not all of the parties accede to paper proceedings, but where live hearings would not aid the Judges in their deliberations and any legal requirements could be met with paper proceedings. Cf., *Mathews v. Eldridge*, 424 U.S. 319 (1976); *United States v. Florida E. Coast Ry. Co.*, 410 U.S. 224, 239 (1973); *U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 652 (D.C. Cir. 1994). It is difficult to predict, in the abstract, exactly what sort of controversies will be amenable to involuntary paper proceedings. These regulations, at § 351.3(c)(1), require a party seeking an unconsented paper proceeding to show that such proceedings would be legally permissible. Comments are sought as to whether the regulations might go further in specifying the situations where paper proceedings may be imposed upon an unwilling participant.

Discovery in Distribution Proceedings. Section 803(b)(6)(C)(viii) of the Copyright Act requires the Board to apply "[t]he rules and practices" used by the Copyright Office for CARP proceedings "relating to discovery in proceedings \* \* \* to determine the distribution of royalty fees \* \* \*." In the context of other Reform Act procedural requirements, "rules and practices" appears to be a reference to the limited discovery in distribution cases set forth at 37 CFR 251.45(c). Accordingly, in contrast to the depositions and interrogatories permitted in rate disputes (§ 351.5(c)), discovery in distribution cases (§ 351.6) will allow only for production of documents underlying written direct and rebuttal statements. The 45-day period for discovery set forth in 37 CFR 251.45(b) will also apply in these cases.

Additional Discovery During Hearings. Section 351.12, *infra*, is intended to implement section 803(b)(6)(C)(vi) of the Copyright Act, based on the assumption that this provision is designed to allow certain requests for supplementary reports or

analyses during the course of an evidentiary hearing. Comments are sought on the validity of that assumption.

It should be noted that the regulations include, in § 351.12(a), a heightened threshold for invocation of this type of discovery, calling for a showing "that, absent the discovery sought, [the Board's] ability to achieve a just resolution of the proceeding would be substantially impaired." This standard reflects the concern that motions for additional discovery during the proceedings can be costly and disruptive, if misused as a litigation tactic. Comments on this concern are solicited.

Extension Policy; Date Computation. Board proceedings will be conducted with limited staff resources, under schedules that are driven by statutory deadlines. These proceedings will often involve multiple parties that will be laboring under the assumption that other parties will comply with procedural timeliness requirements. Accordingly, the new Board regulations include a provision, § 350.5(a), that specifies the required content of an extension motion. It is not intended to create an unnecessarily restrictive or harsh extension policy. But extensions must be justified and should not be taken for granted.

Section 350.5(b) explains how due dates should be computed. The methodology is adopted from Rule 26, Federal Rules of Appellate Procedure.

Claims to Funds in Royalty Pools. Eligibility to receive copyright royalties paid by cable systems, satellite carriers, and manufacturers and importers of digital audio recording devices and media ("DART") is contingent upon the submission of a timely filed claim. See, 17 U.S.C. 111, 119, and 1007. Cable and satellite claims must be filed during the month of July; DART claims must be filed during the months of January and February. Under the Reform Act, the next claims filings will be made under the authority of the Copyright Royalty Judges "[t]o accept or reject royalty claims \* \* \* on the basis of timeliness." 17 U.S.C. 801(b)(4).

Under Copyright Office regulations in effect prior to 2002, claims to these royalty pools were timely filed if they were physically delivered to the Copyright Office or mailed (as proven by a United States Postal Service postmark) within the applicable month. The regulations adopted for the Copyright Royalty Board contain this standard, too. However, the Board is discontinuing an uncodified practice of the Copyright Office. It has been the Copyright Office policy to consider a

claim that was deposited with the United States Postal Service to be timely filed, in July, if it was physically received in the agency's mailroom on August 1.<sup>8</sup> This practice has created additional, unnecessary administrative burdens. Future claimants are advised that the Board will not continue this "August-1-receipt" practice, but will adhere to the strict terms of the regulations regarding filing by United States mail.

The Board is also codifying herewith provisions allowing for the filing of claims electronically. In response to disruptions and delays in mail service, triggered by the anthrax episodes in late 2001 and the subsequent relocation of mail deliveries to a remote site for screening, the Copyright Office has allowed additional methods for filing, accepting claims by e-mail submission or online submission and, in the case of DART claims, filing by facsimile. The history of these adjustments is detailed in the Notice of Proposed Rulemaking published on October 18, 2004, 69 FR 61325, where the Copyright Office proposed permanent changes to the CARP claims filing rules and invited public comments. As proposed by the Copyright Office, the amended filing regulations would provide, in addition to hand delivery and mail filing, a permanent electronic filing system. This electronic filing system would be similar to the system used since 2003.

The Copyright Office's proposed regulations also included a requirement that each claim would utilize a personal identification number ("PIN") as a proxy for the original signature requirement for a hand-delivered or mailed claim. 69 FR 61326-27. Comments on the proposed filing rules, submitted jointly by representatives of all of the Phase I copyright owner claimant groups that had been previously allocated royalties in cable and satellite proceedings ("Claimant Groups"),<sup>9</sup> were largely directed against the adoption of this proposed PIN requirement. The Claimant Groups

averred that the use of a PIN would not prevent fraud. Their comments noted that, in the single criminal proceeding arising from the submission of fraudulent royalty claims (*U.S. v. Galaz*, D.D.C. Crim. No. 02-230), the crime would not necessarily have been prevented by the proposed PIN requirement. The Claimant Groups also expressed concerns that the proposed PIN requirement would add burdens and cause logistical problems, especially for corporate claimants where "the individuals filing for particular copyright owners may change over time" and their PINs, personal to those individuals, frequently would not correspond to the actual copyright owners. Claimant Groups joint comments, at 5. The Claimant Groups proposed, as an alternative to the PIN proposal, use of an affirmation or certification at the end of the online form that would serve as a ratification of the claim. *Id.*, at 7-9 (discussing the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.*). The Claimant Groups pointed out that their alternative proposal would be similar to the verifications used for trademark registrations at the U.S. Patent and Trademark Office, while the Copyright Office's PIN proposal was similar to a proposal that was rejected by the Federal Communications Commission. *Id.*, at 9-12 (citing *In the Matter of Electronic Filing of Documents in Rulemaking Proceedings, Report and Order*, 13 FCCRvd 11322 (1998)).

In view of the arguments set forth in the Claimant Groups comments, and in the absence of any support for the PIN proposal, that proposal will not be adopted in the Board's regulations promulgated with this notice. The Board will rely upon the verification that accompanies each claim and the potential of criminal sanctions for false claims.

In making this decision, it should be emphasized that, while the copyright owners represented stand to lose the most from any claims fraud that may occur, the officials charged with administering the statutory license royalty pools have a profound sense of responsibility to do whatever reasonably might be done by the government to avoid fraud in the distribution of the royalty pools. Comment is sought as to any further steps that might be taken to discourage fraud or other mischief in the claims submission process.<sup>10</sup>

<sup>10</sup> It should be noted that any suggestions made regarding the filing of claims will not be implemented for the filing of cable and satellite claims in July 2005. Such comments will be

The Claimant Groups also asked (comments at 16-17) the Copyright Office to regard claims postmarked in July in foreign countries as timely, regardless of the date received. This proposition has previously been rejected by the Copyright Office, in its rulemaking proceedings for the adoption of CARP procedures, for cogent reasons. *See*, 59 FR 63025, 63039 (December 7, 1994). If a claim is not received in July, the Board will accept only a United States Postal Service postmark with a July date for the same reasons as those expressed by the Copyright Office in that decision. To avoid difficulties, claimants ought to submit their claims as early in July as possible.

The forms to be used by the parties in making claims to the royalty pools will reflect several other suggestions presented in the comments: The forms will not have a "filing status" line. Cf., Claimant Groups comments, at 15-16. Paragraph 3 of the forms for claims to share in cable and satellite royalty pools will state that music performing rights organizations do not have to list the names of their members and affiliates and paragraph 5 will include a line for listing (a) the name of a copyrighted musical work performed on the identified television program, (b) the name of the writer, and (c) the name of the publisher. Cf., separate ASCAP/BMI comments.

Finally, the Copyright Office's proposed rules included a couple of technical items on which no comments were received: a requirement that, with respect to electronic claims filings, the filled-in forms must be received at the government's server by 5 p.m. on the last day of the applicable statutory filing period and the elimination of filing by facsimile for DART claims. The Board is adopting those two proposals.

#### List of Subjects

##### 37 CFR Part 301

Copyright, Organization and functions (government agencies).

##### 37 CFR Part 302

Copyright, Freedom of information, Reporting and recordkeeping requirements.

##### 37 CFR Part 350

Administrative practice and procedure, Copyright, Lawyers.

##### 37 CFR Part 351

Administrative practice and procedure, Copyright.

considered, and if accepted, will be implemented at a later date.

<sup>8</sup> It was concluded that physical receipt of mail on August 1 provided an "absolute assurance" that the claim had been mailed in the United States (and therefore filed) in July. *See*, *MGM Studios, Inc. v. Peters*, 309 F. Supp. 2d 48 (D.D.C., 2004), and *Universal City Studios, LLLP v. Peters*, 308 F. Supp. 2d 1, affirmed sub nom. *Universal City Studios, LLLP v. Peters*, D.C. Cir. Nos. 04-5138 & 04-5142 (April 8, 2005).

<sup>9</sup> The Claimant Groups' joint comments were signed by representatives of the National Association of Broadcasters and the Broadcaster Claimant Group; the Program Suppliers; the Joint Sports Claimants; the Public Television Claimants; Broadcast Music Inc. (BMI); the American Society of Composers, Authors and Publishers (ASCAP); SESAC, Inc.; the Devotional Claimants; National Public Radio; and the Canadian Claimants.

**37 CFR Part 352**

Administrative practice and procedure, Copyright.

**37 CFR Part 353**

Administrative practice and procedure, Copyright.

**37 CFR Part 354**

Administrative practice and procedure, Copyright.

**37 CFR Part 360**

Cable television, Claims, Copyright, Recordings, Satellites, Television.

**Authority and Issuance**

■ For the reasons set forth in the preamble, the Library of Congress establishes a new Chapter III in Title 37 of the Code of Federal Regulations to read as follows:

**CHAPTER III—COPYRIGHT ROYALTY BOARD, LIBRARY OF CONGRESS****SUBCHAPTER A—GENERAL PROVISIONS****Part**

301—Organization

302—Public access to records

**SUBCHAPTER B—COPYRIGHT ROYALTY BOARD RULES AND PROCEDURES**

350—General administrative provisions

351—Proceedings

352—Determinations

353—Rehearing

354—Submissions to the Register of Copyrights

360—Filing of claims to royalty fees collected under compulsory license

**SUBCHAPTER A—GENERAL PROVISIONS****PART 301—ORGANIZATION****Sec.**

301.1 Copyright Royalty Board.

301.2 Official addresses.

301.3 Office location.

**Authority:** 17 U.S.C. 801.

**§ 301.1 Copyright Royalty Board.**

The Copyright Royalty Board is the institutional entity in the Library of Congress that will house the Copyright Royalty Judges, appointed pursuant to 17 U.S.C. 801(a), and their staff.

**§ 301.2 Official addresses.**

All claims, pleadings, and general correspondence intended for the Copyright Royalty Board must be addressed as follows:

(a) If sent by mail (including overnight delivery using United States Postal Service Express Mail), the envelope should be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

(b) If hand delivered by a private party, the envelope must be brought to

Room LM-401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000.

(c) If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar courier services), the envelope must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC, Monday through Friday, between 8:30 a.m. and 4 p.m., and be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC.

(d) Correspondence and filings for the Copyright Royalty Board may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

**§ 301.3 Office location.**

The offices of the Copyright Royalty Board are located in the Library of Congress, James Madison Memorial Building, Room LM-403, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000.

**PART 302—PUBLIC ACCESS TO RECORDS****Sec.**

302.1 Public records.

302.2 Public access.

**Authority:** 5 U.S.C. 552.

**§ 302.1 Public records.**

(a) All final determinations of the Copyright Royalty Board, and the relevant facts and reasons for those determinations, will be published in the **Federal Register**.

(b) Records of proceedings before the Board will be available for public inspection at the Copyright Royalty Board offices, to the extent that disclosure is required under the Freedom of Information Act, 5 U.S.C. 552.

**§ 302.2 Public access.**

(a) *Location.* The records of the Copyright Royalty Board will be located at the address provided in § 301.3 of this chapter.

(b) *Requests.* Requests for information or access to records must be directed to the Copyright Royalty Board. No requests for information or access to

records shall be directed to or accepted by a Copyright Royalty Judge.

(c) *Fees.* For services rendered in connection with document location and reproduction, the following fees shall apply:

(1) For photocopies made by Copyright Royalty Board staff, the charge will be 40 cents per page copied.

(2) For the time Copyright Royalty Board staff spends in fulfilling a search request or providing other services, the charge will be \$65 per hour or fraction thereof.

**SUBCHAPTER B—COPYRIGHT ROYALTY BOARD RULES AND PROCEDURES****PART 350—GENERAL ADMINISTRATIVE PROVISIONS****Sec.**

350.1 Scope.

350.2 Representation.

350.3 Caption required.

350.4 Filing and service.

350.5 Time.

350.6 Construction and waiver.

**Authority:** 17 U.S.C. 803.

**§ 350.1 Scope.**

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

**§ 350.2 Representation.**

Parties in proceedings before the Board may represent themselves or be represented by an attorney. 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.

**§ 350.3 Caption required.**

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

**§ 350.4 Filing and service.**

(a) *Filing of pleadings.* The submitting party shall deliver an original and five copies of all filings 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.

(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 Board 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 and verification.* (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 address and telephone 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 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.

(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 address and telephone number. 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.

(3) *Verification.* The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

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

(g) *Service list.* The Copyright Royalty Board will compile and distribute, to those parties who have filed a petition to participate that has been accepted by the Board, 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 Board 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.

#### § 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 Board or the Board's 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 Board's office inaccessible.

(4) As used in this rule, "legal holiday" means 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 may do so by written motion. 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 the delay is unavoidable; and

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

#### § 350.6 Construction and waiver.

The regulations of the Copyright Royalty Board are intended to provide efficient and just administrative proceedings and will be construed to advance these purposes. For purposes of an individual proceeding, the provisions of this subchapter may be suspended or waived, in whole or in part, upon a showing of good cause, to the extent allowable by law.

### PART 351—PROCEEDINGS

Sec.

351.1 Initiation of proceedings.

351.2 Voluntary negotiation period; settlement.

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351.13 Closing the record.

351.14 Transcript and record.

351.15 Proposed findings of fact and conclusion of law.

**Authority:** 17 U.S.C. 803, 805.

#### § 351.1 Initiation of proceedings.

(a) *Notice of commencement; solicitation of petitions to participate.* All proceedings before the Copyright Royalty Board to make determinations and adjustments of reasonable terms and rates of royalty payments, and to authorize the distribution of royalty fees, shall be initiated by publication in the **Federal Register** of a notice of the initiation of proceedings calling for the filing of petitions to participate in the proceeding.

(b) *Petitions to participate.* (1) *Royalty rate proceedings.* (i) *Single petition.*

Each petition to participate filed in a royalty rate proceeding must include:

(A) The petitioner's full name, address, telephone number, facsimile number (if any), and e-mail address (if any);

(B) A description of the petitioner's significant interest in the subject matter of the proceeding; and

(C) A statement of the petitioner's intention to fully participate in the royalty rate proceeding;

(ii) *Joint petition.* Petitioners with similar interests may, in lieu of filing individual petitions, file a single petition. Each joint petition must include:

(A) The full name, address, telephone number, facsimile number (if any), and e-mail address (if any) of the person filing the petition;

(B) A list identifying all participants to the joint petition;

(C) A description of the participants' significant interest in the subject matter of the proceeding;

(D) A statement of the participants' intention to fully participate in the royalty rate proceeding; and

(E) If the joint petition is filed by counsel or a representative of one or more of the participants that are named in the joint petition, a statement from such counsel or representative certifying that, as of the date of submission of the joint petition, such counsel or representative has the authority and

consent of the participants to represent them in the royalty rate proceeding.

(2) *Distribution proceedings.* (i) *Single petition.* Each petition to participate filed in a royalty distribution proceeding must include:

(A) The petitioner's full name, address, telephone number, facsimile number (if any), and e-mail address (if any);

(B) In a cable or satellite royalty distribution proceeding, identification of whether the petition covers a Phase I proceeding (the initial part of a distribution proceeding where royalties are divided among the categories or groups of copyright owners), a Phase II proceeding (where the money allotted to each category is subdivided among the various copyright owners within that category), or both;

(C) A description of the petitioner's significant interest in the subject matter of the proceeding; and

(D) A statement of the petitioner's intention to fully participate in the royalty distribution proceeding;

(ii) *Joint petition.* Petitioners with similar interests may, in lieu of filing individual petitions, file a single petition. Each joint petition must include:

(A) The full name, address, telephone number, facsimile number (if any), and e-mail address (if any) of the person filing the petition;

(B) A list identifying all participants to the joint petition;

(C) In a cable or satellite royalty distribution proceeding, identification of whether the petition covers a Phase I proceeding (the initial part of a distribution proceeding where royalties are divided among the categories or groups of copyright owners), a Phase II proceeding (where the money allotted to each category is subdivided among the various copyright owners within that category), or both;

(D) A description of the participants' significant interest in the subject matter of the proceeding;

(E) A statement of the participants' intention to fully participate in the royalty distribution proceeding; and

(F) If the joint petition is filed by counsel or a representative of one or more of the participants that are named in the joint petition, a statement from such counsel or representative certifying that, as of the date of submission of the joint petition, such counsel or representative has the authority and consent of the participants to represent them in the royalty distribution proceeding.

(3) *Filing deadline.* A petition to participate shall be filed by no later than 30 days after the publication of the

notice of commencement of a proceeding, subject to the qualified exception set forth in paragraph (d) of this section.

(4) *Filing fee.* A petition to participate must be accompanied with a filing fee of \$150 or the petition will be rejected. Payment shall be made to the Copyright Royalty Board. If a check is subsequently dishonored, the petition will be rejected. If the petitioner believes that the contested amount of that petitioner's claim will be less than \$10,000, petitioner shall so state in the petition to participate and should not include payment of the \$150 filing fee. If it becomes apparent during the course of the proceedings that the contested amount of the claim is more than \$10,000, the Board will require payment of the filing fee at such time.

(c) *Acceptance and rejection of petitions to participate.* A petition to participate will be deemed to have been allowed by the Copyright Royalty Board unless the Board has determined that the petitioner lacks a significant interest in the proceeding or that the petition is otherwise invalid.

(d) *Late petitions to participate.* The Copyright Royalty Board may, for substantial good cause shown, and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. However, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period.

#### **§ 351.2 Voluntary negotiation period; settlement.**

(a) *Commencement; duration.* Within thirty-five business days from the date a proceeding is initiated by notice in the **Federal Register** pursuant to § 351.1(a), the Copyright Royalty Board will announce the beginning of a voluntary negotiation period and will make a list of the participants available to the participants in the particular proceeding. The voluntary negotiation period shall last three months, after which the parties shall notify the Board in writing as to whether a settlement has been reached.

(b) *Settlement.* (1) *Distribution proceedings.* To the extent that a settlement or partial settlement has been reached in a distribution proceeding, that agreement will provide the basis for a full or partial distribution.

(2) *Royalty rate proceedings.* If, in a proceeding to determine statutory terms

and rates, the participating parties report that a settlement has been reached by some or all of the parties, the Copyright Royalty Board will publish the settlement in the **Federal Register** for notice and comment from those bound by the terms, rates, or other determination set by the agreement. The Board may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement if the Board concludes that the agreement does not provide a reasonable basis for setting statutory terms or rates.

#### **§ 351.3 Controversy and further proceedings.**

(a) *Declaration of controversy.* If a settlement has not been reached within the voluntary negotiation period, the Copyright Royalty Board will issue an order declaring that further proceedings are necessary. The procedures set forth at §§ 351.4, *et seq.*, for formal hearings will apply, unless the abbreviated procedures set forth in paragraphs (b) and (c) of this section are invoked by the Copyright Royalty Board.

(b) *Small claims in distribution proceedings.* (1) *General.* If, in a distribution proceeding, the contested amount of a claim is \$10,000 or less, the Copyright Royalty Board shall decide the controversy on the basis of the filing of the written direct statement by each participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement.

(2) *Bad faith inflation of claim.* If the Copyright Royalty Board determines that a participant asserts in bad faith an amount in controversy in excess of \$10,000 for the purpose of avoiding a determination under the procedure set forth in paragraph (b)(1) of this section, the Copyright Royalty Board shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

(c) *Paper proceedings.* (1) *Where used.* The procedure under this paragraph (c) will be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure. In the absence of an agreement in writing among all participants, this procedure may be applied by the Board, in its discretion, either on the motion of a party or by the Copyright Royalty Board sua sponte. A party requesting use of paper proceedings, in the absence of

agreement among the other participants, should include in the motion a showing that the use of paper proceedings in the particular case would meet any due process or other legal requirements.

(2) *Course of procedure.* Paper proceedings will be decided on the basis of the filing of the written direct statement by the participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement. Before a decision becomes final in a case utilizing paper proceedings, the Copyright Royalty Board will offer the participants the opportunity to comment on the decision.

#### § 351.4 Written direct statements.

(a) *Required filing; deadline.* All parties who have filed a petition to participate in the hearing must file a written direct statement. The deadline for the filing of the written direct statement will be specified by the Copyright Royalty Board, not earlier than 4 months, nor later than 5 months, after the end of the voluntary negotiation period set forth in § 351.2.

(b) *Content required.* (1) *Testimony.* The written direct statement shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct statement.

(2) *Designated testimony.* Each participating party may designate a portion of past records, including records of the Copyright Royalty Tribunal or Copyright Arbitration Royalty Panels, that it wants included in its direct statement. If a party intends to rely on any part of the testimony of a witness in a prior proceeding, the complete testimony of that witness (*i.e.*, direct, cross and redirect examination) must be designated. The party submitting such designated testimony shall include a copy of that testimony with the written direct statement.

(3) *Claim.* In the case of a royalty distribution proceeding, each party must state in the written direct statement its percentage or dollar claim to the fund. In the case of a rate (or rates) proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law.

(4) *Material questions.* Under a separate heading, the written direct statement shall set forth any "material question of substantive law" that is

expected to arise in the course of the proceeding and might warrant certification to the Register of Copyrights under 17 U.S.C. 802(f). Cf., 37 CFR Part 354.

(c) *Amended written direct statements.* A participant in a proceeding may amend a written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period. An amended written direct statement must explain how it differs from the written direct statement it will amend and must demonstrate that the amendment is based on new information received during the discovery process. The participant amending its written direct statement may file either the amended portions of the written direct statement or submit complete new copies at its option.

#### § 351.5 Discovery in royalty rate proceedings.

(a) *Schedule.* Following the submission to the Copyright Royalty Board of written direct statements by the participants in a royalty rate proceeding, and after conferring with the participants, the Copyright Royalty Board will issue a discovery schedule. Discovery shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Board in connection with the resolution of motions, orders, and disputes pending at the end of such period. The discovery schedule will include a date for the post-discovery settlement conference addressed in § 351.7.

(b) *Document production.* A participant in a royalty rate proceeding may request of an opposing participant nonprivileged documents that are directly related to the written direct statement or written rebuttal statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production. The motion must show how the disputed document or documents would actually be relevant to the moving party's case and that the information sought is not readily available to the moving participant in a form or format that would be substantially less burdensome to produce. The motion must also include a statement that the parties had conferred and were unable to resolve the matter.

(c) *Depositions and interrogatories.* In a proceeding to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. Similarly, the

participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories.

#### § 351.6 Discovery in distribution proceedings.

In distribution proceedings, the Board shall designate a 45-day period following the filing of written direct and rebuttal statements within which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

#### § 351.7 Settlement conference.

A post-discovery settlement conference will be held among the participants, within 21-days after the close of discovery, outside of the presence of the Copyright Royalty Board. Immediately after this conference the participants shall file with the Copyright Royalty Board a Joint Settlement Conference Report indicating the extent to which the participants have reached a settlement.

#### § 351.8 Pre-hearing conference.

In the absence of a complete settlement in a proceeding not subject to the abbreviated procedures set forth in §§ 351.3(b) and (c), a hearing will be scheduled expeditiously so as to allow the Board to conduct hearings and issue its final determination in the proceeding within the time allowed by the Copyright Act. Prior to the hearing, the Board may conduct a prehearing conference to assist in setting the order of presentation of evidence and the appearance of witnesses at the hearing.

#### § 351.9 Conduct of hearings.

(a) *By panels.* Hearings will be conducted by all Copyright Royalty Judges sitting as a panel.

(b) *Role of Chief Judge.* The Chief Copyright Royalty Judge may preside over such collateral and administrative proceedings, and over proceedings under section 803(b)(1) through (5) of the Copyright Act, as the Chief Judge considers appropriate. Subject to the vote of the Copyright Royalty Judges, the Chief Judge shall have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the Board's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even number of Judges sitting at the hearing, with the exception of a hearing pursuant to 17

U.S.C. 803(a)(2), it takes a majority vote to grant a motion or sustain an objection. A tie vote will result in the denial of a motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent proceedings.

(c) *Opening statements.* In each distribution or rate proceeding, each party may present its opening statement summarizing its written direct statement.

#### § 351.10 Evidence.

(a) *Admissibility.* All evidence that is relevant and not unduly repetitious or privileged, shall be admissible. Written testimony and exhibits will be received into the record, except where the Board sustains an objection. No evidence, including exhibits, may be submitted without a sponsoring witness, except matters of which the Board may take official notice.

(b) *Examination of witnesses.* All witnesses shall be required to take an oath or affirmation before testifying. Parties are entitled to conduct direct examination (consisting of the testimony of the witness in the written direct statement and an oral summary of that testimony); cross-examination (limited to matters raised on direct examination); and redirect examination (limited to matters raised on cross-examination). The Board may limit the number of witnesses or limit questioning to avoid cumulative testimony.

(c) *Documentary evidence.* (1) *Submission as exhibits.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits.

(2) *Separation of irrelevant portions.* Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence.

(3) *Bulky exhibits.* In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. In such instances, a true copy of the material and relevant matter may be

presented in extract form, and submitted as evidence.

(d) *Copies.* Anyone presenting documents as evidence must present copies to all other participants in the proceedings, or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant. However, if a publicly available document issued by a governmental entity (such as an official report, decision, opinion, or published scientific or economic data) is offered in evidence, it may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Board.

(1) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(i) *Sample surveys.*

(A) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(B) An explanation of the method of selecting the sample and of the characteristics which were measured and counted.

(ii) *Econometric investigations.*

(A) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(B) A clear statement of how any changes in the assumptions might affect the final result; and

(C) Any available alternative studies that employ alternative models and variables, if requested.

(iii) *Experimental analysis.*

(A) A complete description of the design, the controlled conditions, and the implementation of controls; and

(B) A complete description of the methods of observation and adjustment of observation.

(iv) *Studies involving statistical methodology.*

(A) The formula used for statistical estimates;

(B) The standard error for each component;

(C) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(D) Summarized descriptions of input data and, if requested, the input data themselves.

(f) *Objections; offers of proof.* Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished unprivileged underlying documents. If the Board rejects or excludes testimony, the participant proffering the testimony may submit an offer of proof for the record. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(g) *New documents for use in cross-examination.* Documents that have not been identified and exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the Board and to the other participants before being shown to the witness at the time of cross-examination, unless the Board directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony.

#### § 351.11 Rebuttal proceedings.

Written rebuttal statements shall be filed at a time designated by the Copyright Royalty Board upon conclusion of the hearing of the direct case, in the same form and manner as the written direct statement, except that the claim or the requested rate shall not have to be included if it has not changed from the written direct statement. Further proceedings at the rebuttal stage shall follow the schedule ordered by the Board.

#### § 351.12 Requests for additional discovery during the hearing in rate proceedings.

(a) A participant may, in the course of a royalty rate hearing, request of an opposing participant or witness other relevant information. The request may be made by means of written motion or oral motion on the record. The Copyright Royalty Board will allow such request only if they determine that, absent the discovery sought, their ability to achieve a just resolution of the

proceeding would be substantially impaired.

(b) In determining whether discovery will be granted under this section, the Copyright Royalty Board will consider—

(1) Whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

(2) Whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

(3) Whether the participant seeking the discovery had an ample opportunity by previous discovery in the proceeding or by other means to obtain the information sought.

(c) This section shall not apply to any proceeding scheduled to commence after December 31, 2010.

#### § 351.13 Closing the record.

To close the record of a hearing, the Chief Judge shall make an announcement that the taking of testimony has concluded. In its discretion the Copyright Royalty Board may close the record as of a future specified date, and all time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has recessed may not be closed by the Chief Judge before the day on which the hearing is to resume, except upon ten days' notice to all parties.

#### § 351.14 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Copyright Royalty Board. Anyone wishing to inspect the transcript of a hearing may do so at the offices of the Board.

(b) The transcript of testimony and all exhibits, documents, filings and other items submitted in the course of a proceeding shall constitute the official written record. The written record, along with the Board's final determination, shall be available at the Board's offices for public inspection and copying.

#### § 351.15 Proposed findings of fact and conclusions of law.

(a) Any party to the proceeding may file proposed findings of fact and

conclusions, briefs or memoranda of law, or may be directed by the Board to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the Board directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated and numbered by paragraph separately.

### PART 352—DETERMINATIONS

Sec.

352.1 How made.

352.2 Timing.

352.3 Final determinations.

**Authority:** 17 U.S.C. 803.

#### § 352.1 How made.

Except for decisions authorized by law to be made by a single Copyright Royalty Judge, determinations of the Board in a proceeding will be made by a majority of the Copyright Royalty Judges. The opinion or opinions of the majority and any dissenting opinion will be included in the determination. Each determination by the Board will be transmitted to the Register of Copyrights to enable review for consistency with the Copyright Act on the day it is issued.

#### § 352.2 Timing.

The Copyright Royalty Board will issue its determination within 11 months of the date of the post-discovery settlement conference or 15 days before the expiration of the existing rates or terms in a proceeding to determine successors to rates or terms that will expire on a specific date, whichever date first occurs.

#### § 352.3 Final determinations.

The determination by the Board in a proceeding will become final 15 days after it is issued, unless it is withdrawn by the Board on its own motion, suspended pending rehearing proceedings, or the Register of Copyrights advises the Board that its determination is inconsistent with the Copyright Act. The final determination will be published in the **Federal Register**.

### PART 353—REHEARING

Sec.

353.1 When granted.

353.2 Form and content of rehearing motions.

353.3 Procedure on rehearing.

353.4 Filing deadline.

353.5 Participation not required.

**Authority:** 17 U.S.C. 803.

#### § 353.1 When granted.

A motion for rehearing may be filed by any participant in the relevant proceeding. The Copyright Royalty Board may grant rehearing upon a showing that any aspect of the Board's determination may be erroneous. Rehearing will be granted only in exceptional cases, however, and should not be sought merely to reargue a rate or distribution level determination that falls within the zone of reasonableness established by the record.

#### § 353.2 Form and content of rehearing motions.

A motion for rehearing shall not exceed 10 pages in length and must set forth, in the beginning of its text, a brief summary statement of the aspects of the determination believed by the moving participant to be without evidentiary support in the record or contrary to legal requirements.

#### § 353.3 Procedure on rehearing.

Upon receipt of a motion for rehearing, the Copyright Royalty Board will issue an order either denying the motion or ordering further proceedings. No participant shall file a response to a rehearing motion, unless such response is allowed by order of the Copyright Royalty Board.

#### § 353.4 Filing deadline.

A motion for hearing must be filed within 10 days after the date on which the Copyright Royalty Board delivers to the participants an initial determination.

#### § 353.5 Participation not required.

In any case in which a response to a rehearing motion is allowed, or rehearing is granted, an opposing party shall not be required to participate in the rehearing. The Copyright Royalty Board will not draw any negative inference from a lack of participation in a rehearing. However, participants should be aware that nonparticipation in rehearing proceedings may limit the scope of their participation in judicial review proceedings as set forth in 17 U.S.C. 803(d)(1).

### PART 354—SUBMISSIONS TO THE REGISTER OF COPYRIGHTS

Sec.

354.1 Material questions of copyright law.

354.2 Novel questions.

354.3 Register of Copyrights' authority to redesignate referrals.

354.4 Consultation regarding acts required by the Register of Copyrights.

354.5 Jurisdiction of the Copyright Royalty Board unaffected.

**Authority:** 17 U.S.C. 802.

**§ 354.1 Material questions of copyright law.**

(a) *Discretionary referrals.* The Copyright Royalty Board may seek guidance from the Register of Copyrights with respect to a material question of substantive law, concerning an interpretation or construction of those provisions of the Copyright Act, that arises in the course of their proceedings.

(b) *How presented.* One or more of the Copyright Royalty Judges may refer what he or she believes to be a material question of substantive law to the Register of Copyrights at any time during a proceeding.

(c) *Motion; content.* Any participant may submit a motion to the Copyright Royalty Board (but not to the Register of Copyrights) requesting their referral to the Register of Copyrights a question that the participant believes would be suitable for referral under paragraph (a) of this section. The motion should be captioned "Motion of [Participant(s)] Requesting Referral of Material Question of Substantive Law." The motion should set forth, at the outset, the precise legal question for which the moving party is seeking interlocutory referral to the Register of Copyrights. The motion should then proceed to explain, with brevity, why the issue meets the criteria for potential referral under paragraph (a) of this section and why the interests of fair and efficient adjudication would be best served by obtaining interlocutory guidance from the Register of Copyrights. The motion should not include argument on the merits of the issue, but may include a suggested schedule of briefing that would make reasonable provision for comments and legal arguments, in such a way as to avoid delay and duplication.

(d) *Time of motion.* A motion for referral of a material question of substantive law to the Register of Copyrights should be filed as soon as possible in the relevant proceeding. However, such a motion may be submitted to the Copyright Royalty Board at any time before a final determination is issued.

(e) *Action on motion.* (1) *Referral granted.* Upon consideration of a Motion Requesting Referral of Material Question of Substantive Law, if one or more of the Copyright Royalty Judges agrees with the request, the Chief Judge

shall issue an appropriate referral. The referral will identify the Judge or Judges voting in favor of the referral, the issue to be referred, and the schedule for the filing of briefs by the parties of the issues. After the briefs and other relevant materials are received, they will be transmitted to the Register of Copyrights. A Copyright Royalty Judge who voted against the referral who wishes to do so may include a statement explaining that vote in the referral package.

(2) *Referral denied.* If none of the Copyright Royalty Judges agrees with the request, the Board will issue an order denying the request which will provide the basis for the decision. A copy of any order denying a Motion Requesting Referral of Material Question of Substantive Law will be transmitted to the Register of Copyrights.

(f) *No effect on proceedings.* The issuance of a request to the Register of Copyrights for an interpretive ruling under this part does not delay or otherwise affect the schedule of the participants' obligations in the relevant ongoing proceeding, unless that schedule or those obligations are expressly changed by order of the Board.

(g) *Binding effect; time limit.* The Copyright Royalty Board will not issue a final determination in a proceeding where the referral of a question to the Register of Copyrights under this part is pending, unless the Register has not delivered the decision to the Copyright Royalty Board within 14 days after the Register receives all of the briefs of the participants. If the decision of the Register of Copyrights is timely delivered to the Copyright Royalty Board, the decision will be included in the record of the proceeding. The legal interpretation embodied in the timely delivered response of the Register of Copyrights in resolving material questions of substantive law is binding upon the Copyright Royalty Board and will be applied by them in their final determination in the relevant proceeding.

**§ 354.2 Novel questions.**

(a) *Mandatory referrals.* If the material question of substantive law described in § 354.1(a) is a novel question of law, referral to the Register of Copyrights by the Copyright Royalty Board is mandatory. A "novel question of law" is a question of law that has not been determined in the prior decisions, determinations, or rulings under the Copyright Act of the Copyright Royalty Board, the Librarian of Congress, the Register of Copyrights, the Copyright Arbitration Royalty Panels (to the extent

they are consistent with the current decisions, determinations, or rulings of the Register of Copyrights or the Librarian of Congress), or the former Copyright Royalty Tribunal.

(b) *Procedures.* The procedures set forth for the discretionary referral of material questions of copyright law to the Register of Copyrights by the Copyright Royalty Board, set forth in § 354.1, shall also govern the mandatory referral of novel questions, except that the Register of Copyrights' decision will be timely if it is delivered to the Copyright Royalty Board within 30 days after the Register of Copyrights has received all of the briefs or comments of the participants. The Copyright Royalty Board will not issue a final determination in a proceeding where the referral of a novel question to the Register of Copyrights under this part is pending, unless this 30-day period has expired.

**§ 354.3 Register of Copyrights' authority to redesignate referrals.**

If, during the 14-day period of a discretionary referral of a material question of law under § 354.1, the Register of Copyrights determines that the question is a "novel" one within the meaning of § 354.2(a), the Register may notify the Copyright Royalty Board of that determination. The Copyright Royalty Board will be bound by such a determination by the Register of Copyrights and will regard the Register's decision as timely delivered if it is received within the 30-day period applicable to novel question referrals.

**§ 354.4 Consultation regarding acts required by the Register of Copyrights.**

The Copyright Royalty Board shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

**§ 354.5 Jurisdiction of the Copyright Royalty Board unaffected.**

Nothing in this part is intended to impair the jurisdiction of the Copyright Royalty Board or to interfere with the conduct of its proceedings. Referrals to the Register of Copyrights under this part shall not include questions of procedure before the Copyright Royalty Board, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate.

## PART 360—FILING OF CLAIMS TO ROYALTY FEES COLLECTED UNDER COMPULSORY LICENSE

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**Authority:** 17 U.S.C. 801, 803, 805.

Subpart A also issued under 17 U.S.C. 111(d)(4).

Subpart B also issued under 17 U.S.C. 119(b)(4).

Subpart C also issued under 17 U.S.C. 1007(a)(1).

### Subpart A—Cable Claims

#### § 360.1 General.

This subpart prescribes procedures under 17 U.S.C. 111(d)(4)(A) whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Royalty Board.

#### § 360.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Royalty Board. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

#### § 360.3 Form and content of claims.

(a) *Forms.* (1) Each claim to cable compulsory license royalty fees shall be furnished on a form prescribed by the Copyright Royalty Board and shall contain the information required by that form and its accompanying instructions.

(2) Copies of cable claim forms are available:

(i) On the Copyright Royalty Board Web site at <http://www.loc.gov/crb/claims/> for claims filed with the Copyright Royalty Board by mail or by hand delivery in accordance with § 360.4(a)(2)–(4);

(ii) On the Copyright Royalty Board Web site at <http://www.loc.gov/crb/cable/> during the month of July for claims filed online in accordance with § 360.4(a)(1); and

(iii) Upon request to the Copyright Royalty Board, Library of Congress, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

(b) *Content.* (1) *Single claim.* A claim filed on behalf of a single copyright owner of a work or works secondarily transmitted by a cable system shall include the following information:

(i) The full legal name and address of the copyright owner entitled to claim the royalty fees.

(ii) A general statement of the nature of the copyright owner's work or works, and identification of at least one secondary transmission by a cable system of such work or works establishing a basis for the claim.

(iii) The name, telephone number, facsimile number, if any, full address, including a specific number and street name or rural route, and e-mail address, if any, of the person or entity filing the single claim. An e-mail address must be provided on claims submitted online through the Copyright Royalty Board Web site.

(iv) The name, telephone number, facsimile number, if any, and e-mail address, if any, of the person whom the Copyright Royalty Board can contact regarding the claim.

(v) An original signature of the copyright owner or of a duly authorized representative of the copyright owner, except for claims filed online through the Copyright Royalty Board Web site. *See* 37 CFR 360.3(b)(1)(vi).

(vi) A declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing such information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(2) *Joint claim.* A claim filed on behalf of more than one copyright owner whose works have been secondarily transmitted by a cable system shall include the following information:

(i) A list including the full legal name and address of each copyright owner to the joint claim entitled to claim royalty fees.

(ii) A concise statement of the authorization for the person or entity filing the joint claim. For this purpose, a performing rights society shall not be

required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim as required by paragraph (b)(2)(i) of this section.

(iii) A general statement of the nature of the copyright owners' works and identification of at least one secondary transmission of one of the copyright owners' works by a cable system establishing a basis for the joint claim and the identification of the copyright owner of each work so identified.

(iv) The name, telephone number, facsimile number, if any, full address, including a specific number and street name or rural route, and e-mail address, if any, of the person or entity filing the joint claim. An e-mail address must be provided on claims submitted online through the Copyright Royalty Board Web site.

(v) The name, telephone number, facsimile number, if any, and e-mail address, if any, of the person whom the Copyright Royalty Board can contact regarding the claim.

(vi) Original signatures of the copyright owners to the joint claim or of a duly authorized representative or representatives of the copyright owners, except for claims filed online through the Copyright Royalty Board Web site. *See* 37 CFR 360.3(b)(2)(vii).

(vii) Notwithstanding paragraph (b)(2)(ii) of this section, a declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing such information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(c) In the event that the legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim changes after the filing of the claim, the Copyright Royalty Board shall be notified of the change. If the good faith efforts of the Copyright Royalty Board to contact the copyright owner or person or entity filing the claim are frustrated because of failure to notify the Copyright Royalty Board of a name and/or address change, the claim may be subject to dismissal.

#### § 360.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Royalty Board shall be considered timely filed only if:

(1) They are received online in the Board's server no later than 5 p.m. E.D.T. on July 31. Online claims must be filed through the Copyright Royalty Board Web site at <http://www.loc.gov/crb/cable/> during the month of July.

(2) They are hand delivered by a private party no later than 5 p.m. E.D.T. on July 31. Claims hand delivered by a private party must be delivered to the Public Information Office, located at the U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. Claims hand delivered by a private party must be filed at the Public Information Office during the month of July.

(3) They are hand delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services) no later than 4 p.m. E.D.T. on July 31. Claims hand delivered by a commercial courier service (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services) must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, N.E., Washington, DC, Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000. Claims hand delivered by a commercial courier must be filed at CCAS during the month of July.

(4) They are mailed through the United States Postal Service (USPS) having sufficient postage and bearing a July USPS postmark. Claims mailed through USPS must be addressed as follows: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

(5) Federal Express, United Parcel Service and similar overnight delivery services may not be used for the filing of claims. A claim sent by means of overnight delivery shall be done via United States Postal Service Express Mail, and the claim shall be addressed in accordance with paragraph (a)(4) of this section.

(b) Claims dated only with a business meter that are received after July 31 will not be accepted as having been timely filed.

(c) Notwithstanding paragraphs (a) and (b) of this section, in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness

day within the District of Columbia or the Federal Government, claims received by the Copyright Royalty Board by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Royalty Board, proper filing of the claim may nonetheless be proven if it was sent by certified mail return receipt requested, and a receipt bearing a July date stamp of the United States Postal Service, except where paragraph (c) of this section applies, can be provided. No other offer of proof will be accepted in lieu of the receipt.

(f) The Copyright Royalty Board will accept either the confirmation page generated upon submission of the claim online through the Board's Web site or the electronic mail message from the Board confirming receipt of the claim as proof that a claim submitted online through the Board's Web site was received timely in the Board's server. No other offer of proof will be accepted in lieu thereof.

#### **§ 360.5 Copies of claims.**

A claimant shall, for each claim submitted to the Copyright Royalty Board by hand delivery or by mail, file an original and one copy of the claim to cable royalty fees.

#### **Subpart B—Satellite Claims**

##### **§ 360.10 General.**

This subpart prescribes the procedures under 17 U.S.C. 119(b)(4) whereby parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public shall file claims with the Copyright Royalty Board.

##### **§ 360.11 Time of filing.**

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public shall file a claim to such fees with the Copyright Royalty Board. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

##### **§ 360.12 Form and content of claims.**

(a) *Forms.* (1) Each claim to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public shall be furnished on a form prescribed by the Copyright Royalty Board and shall contain the information required by that form and its accompanying instructions.

(2) Copies of satellite claim forms are available:

(i) On the Board's Web site at <http://www.loc.gov/crb/claims/> for claims filed with the Copyright Royalty Board by mail or by hand delivery in accordance with § 360.13(a)(2)-(4);

(ii) On the Board's Web site at <http://www.loc.gov/crb/satellite/> during the month of July for claims filed online in accordance with § 360.13(a)(1); and

(iii) Upon request to the Copyright Royalty Board, Library of Congress, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

(b) *Content.* (1) *Single claim.* A claim filed on behalf of a single copyright owner of a work or works secondarily transmitted by a satellite carrier shall include the following information:

(i) The full legal name and address of the copyright owner entitled to claim the royalty fees.

(ii) A general statement of the nature of the copyright owner's work or works, and identification of at least one secondary transmission by a satellite carrier of such work or works establishing a basis for the claim.

(iii) The name, telephone number, facsimile number, if any, full address, including a specific number and street name or rural route, and e-mail address, if any, of the person or entity filing the single claim. An e-mail address must be provided on claims submitted online through the Copyright Royalty Board Web site.

(iv) The name, telephone number, facsimile number, if any, and e-mail address, if any, of the person whom the Copyright Royalty Board can contact regarding the claim.

(v) An original signature of the copyright owner or of a duly authorized representative of the copyright owner, except for claims filed online through the Copyright Royalty Board Web site. See 37 CFR 360.12(b)(1)(vi).

(vi) A declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing such information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(2) *Joint claim.* A claim filed on behalf of more than one copyright owner whose works have been secondarily

transmitted by a satellite carrier shall include the following information:

(i) A list including the full legal name and address of each copyright owner to the joint claim entitled to claim royalty fees.

(ii) A concise statement of the authorization for the person or entity filing the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim as required by paragraph (b)(2)(i) of this section.

(iii) A general statement of the nature of the copyright owners' works, identification of at least one secondary transmission of one of the copyright owners' works by a satellite carrier establishing a basis for the joint claim, and the identification of the copyright owner of each work so identified.

(iv) The name, telephone number, facsimile number, if any, full address, including a specific number and street name or rural route, and e-mail address, if any, of the person or entity filing the joint claim. An e-mail address must be provided on claims submitted online through the Copyright Royalty Board Web site.

(v) The name, telephone number, facsimile number, if any, and e-mail address, if any, of a person whom the Copyright Royalty Board can contact regarding the claim.

(vi) Original signatures of the copyright owners to the joint claim or of a duly authorized representative or representatives of the copyright owners, except for claims filed online through the Copyright Royalty Board Web site. See 37 CFR 360.12(b)(2)(vii).

(vii) Notwithstanding paragraph (b)(2)(ii) of this section, a declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing such information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(c) In the event that the legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim changes after the filing of the claim, the Copyright Royalty Board shall be notified of the change. If the good faith efforts of the Copyright Royalty Board to contact the copyright owner or person or entity filing the claim are frustrated because of failure to notify the Copyright Royalty Board of a name and/or address change, the claim may be subject to dismissal.

### § 360.13 Compliance with statutory dates.

(a) Claims filed with the Copyright Royalty Board shall be considered timely filed only if:

(1) They are received online in the Board's server no later than 5 p.m. e.d.t. on July 31. Online claims must be filed through the Copyright Royalty Board Web site at <http://www.loc.gov/crb/satellite/> during the month of July.

(2) They are hand delivered by a private party no later than 5 p.m. e.d.t. on July 31. Claims hand delivered by a private party must be delivered to the Public Information Office, located at the U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. Claims hand delivered by a private party must be filed at the Public Information Office during the month of July.

(3) They are hand delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services) no later than 4 p.m. e.d.t. on July 31. Claims hand delivered by a commercial courier service (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services) must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC, Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000. Claims hand delivered by a commercial courier must be filed at CCAS during the month of July.

(4) They are mailed through the United States Postal Service (USPS) having sufficient postage and bearing a July USPS postmark. Claims mailed through USPS must be addressed as follows: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

(5) Federal Express, United Parcel Service and similar overnight delivery services may not be used for the filing of claims. A claim sent by means of overnight delivery shall be done via United States Postal Service Express Mail, and the claim shall be addressed

in accordance with paragraph (a)(4) of this section.

(b) Claims dated only with a business meter that are received after July 31 will not be accepted as having been timely filed.

(c) Notwithstanding paragraphs (a) and (b) of this section, in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Royalty Board by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Royalty Board, proper filing of the claim may nonetheless be proven if it was sent by certified mail return receipt requested, and a receipt bearing a July date stamp of the United States Postal Service, except where paragraph (c) of this section applies, can be provided. No other offer of proof will be accepted in lieu of the receipt.

(f) The Copyright Royalty Board will accept either the confirmation page generated upon submission of the claim online through the Board's Web site or the electronic mail message from the Board confirming receipt of the claim as proof that a claim submitted online through the Board's Web site was received timely in the Board's server. No other offer of proof will be accepted in lieu thereof.

### § 360.14 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Royalty Board by hand delivery or by mail, file an original and one copy of the claim to satellite carrier royalty fees.

### § 360.15 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Royalty Board. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

## Subpart C—Digital Audio Recording Devices and Media Royalty Claims

### § 360.20 General.

This subpart prescribes procedures pursuant to 17 U.S.C. 1007(a)(1),

whereby interested copyright parties, as defined in 17 U.S.C. 1001(7), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media pursuant to 17 U.S.C. 1006, shall file claims with the Copyright Royalty Board.

**§ 360.21 Time of filing.**

(a) *General.* During January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Royalty Board. Claimants may file claims jointly or as a single claim.

(b) *Consequences of an untimely filing.* No royalty payments for the previous calendar year shall be distributed to any interested copyright party who has not filed a claim to such royalty payments during January or February of the following calendar year.

(c) *Authorization.* Any organization or association, acting as a common agent, shall be required to obtain from its members or affiliates separate, specific, and written authorization, signed by members, affiliates, or their representatives, to file claims to the Musical Works Fund or the Sound Recordings Fund, apart from their standard agreements, for purposes of royalties filing and fee distribution. Such written authorization, however, will not be required for claimants to the Musical Works Fund where either:

(1) The agreement between the organization or association and its members or affiliates specifically authorizes such entity to represent its members or affiliates before the Copyright Royalty Board in royalty filing and fee distribution proceedings; or

(2) The agreement between the organization or association and its members or affiliates, as specified in a court order issued by a court with authority to interpret the terms of the contract, authorizes such entity to represent its members or affiliates before the Copyright Royalty Board in royalty filing and fee distribution proceedings.

**§ 360.22 Form and content of claims.**

(a) *Forms.* (1) Each claim to digital audio recording devices and media royalty payments (DART) shall be furnished on a form prescribed by the Copyright Royalty Board and shall contain the information required by that form and its accompanying instructions.

(2) Copies of DART claim forms are available:

(i) On the Board's Web site at <http://www.loc.gov/crb/claims> for claims filed with the Copyright Royalty Board by mail or by hand delivery in accordance with § 360.24(a)(2)–(4);

(ii) On the Board's Web site at <http://www.loc.gov/crb/dart/> during the months of January and February for claims filed online in accordance with § 360.24(a)(1); and

(iii) Upon request to the Copyright Royalty Board, Library of Congress, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

(b) *Content.* Claims filed by interested copyright parties for digital audio recording devices and media royalty payments shall include the following information:

(1) The full legal name and address of the person or entity claiming royalty payments.

(2) The name, telephone number, facsimile number, if any, full address, including a specific number and street name or rural route, and e-mail address, if any, of the person or entity filing the claim. An e-mail address must be provided on claims submitted online through the Copyright Royalty Board Web site.

(3) The name, telephone number, facsimile number, if any, and e-mail address, if any, of a person whom the Copyright Royalty Board can contact regarding the claim.

(4) A statement as to how the claimant fits within the definition of interested copyright party specified in 17 U.S.C. 1001(7).

(5) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in 17 U.S.C. 1006(b), and as to which Subfund of the Sound Recordings Fund (*i.e.*, the copyright owners or featured recording artists Subfund) or the Musical Works Fund (*i.e.*, the music publishers or writers Subfund) the claim is being made against as set forth in 17 U.S.C. 1006(b)(1) through (2).

(6) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under title 17 of the United States Code that has been distributed (as that term is defined in 17 U.S.C. 1001(6)), and that, during the period to which the royalty payments claimed pertain, has been (i) Distributed (as that term is defined in 17 U.S.C. 1001(6)) in the form of digital musical recordings or analog musical recordings, or (ii) Disseminated to the public in transmissions.

(7) A declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing such information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(c) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant, except for claims filed online through the Copyright Royalty Board Web site. *See* 37 CFR 360.22(b)(7).

(d) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Royalty Board of such change. If the good faith efforts of the Copyright Royalty Board to contact the claimant are frustrated because of failure to notify the Copyright Royalty Board of a name and/or address change, the claim may be subject to dismissal.

(e) If the claim is a joint claim, it shall include a concise statement of the authorization for the filing of the joint claim in addition to the declaration required under paragraph (b)(7) of this section and the name of each claimant to the joint claim.

(f) If an interested copyright party intends to file claims against more than one Subfund, each such claim must be filed separately with the Copyright Royalty Board. Any claim that purports to file against more than one Subfund will be rejected.

**§ 360.23 Content of notices regarding independent administrators.**

(a) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001(7)(A), and the American Federation of Musicians (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured musicians as defined in 17 U.S.C. 1006(b)(1), shall file a notice informing the Copyright Royalty Board of his/her name and address.

(b) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001(7)(A), and the American Federation of Television and Radio Artists (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured vocalists as defined in 17 U.S.C. 1006(b)(1), shall file a notice informing the Copyright Royalty Board of his/her full name and address.

(c) A notice filed under paragraph (a) or (b) of this section shall include the following information:

(1) The full name of the independent administrator;

(2) The telephone number and facsimile number, if any, full address, including a specific number and street name or rural route, of the place of business of the independent administrator.

(d) Notice shall bear the original signature of the independent administrator or a duly authorized representative of the independent administrator, and shall be filed with the Copyright Royalty Board no later than March 31 of each year, commencing with March 31, 2006.

(e) No notice may be filed by facsimile transmission.

**§ 360.24 Compliance with statutory dates.**

(a) Claims filed with the Copyright Royalty Board shall be considered timely filed only if:

(1) They are received online in the Board's server no later than 5 p.m. E.S.T. on the last day of February. Online claims must be filed through the Copyright Royalty Board Web site at <http://www.loc.gov/crb/dart/> during the months of January and February.

(2) They are hand delivered by a private party no later than 5 p.m. E.S.T. on the last day of February. Claims hand delivered by a private party must be delivered to the Public Information Office, located at the U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. Claims hand delivered by a private party must be filed at the Public Information Office during the months of January and February.

(3) They are hand delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services) no later than 4 p.m. E.S.T. on the last day of February. Claims hand delivered by a commercial courier service (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services) must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC, Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000. Claims hand delivered by a commercial courier must be filed at CCAS during the months of January and February.

(4) They are mailed through the United States Postal Service (USPS) having sufficient postage and bearing a January or February USPS postmark. Claims mailed through USPS must be addressed as follows: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

(5) Federal Express, United Parcel Service and similar overnight delivery services may not be used for the filing of claims. A claim sent by means of overnight delivery shall be done via United States Postal Service Express Mail, and the claim shall be addressed in accordance with paragraph (a)(4) of this section.

(b) 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.

(c) Notwithstanding paragraphs (a) and (b) of this section, in any year in which 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 received by the Copyright Royalty Board by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Royalty Board, proper filing of the claim may nonetheless be proven if it was sent by certified mail return receipt requested, and a receipt bearing a January or February date stamp of the United States Postal Service, except where paragraph (c) of this section applies, can be provided. No other offer of proof will be accepted in lieu of the receipt.

(f) The Copyright Royalty Board will accept either the confirmation page generated upon submission of the claim online through the Copyright Royalty Board Web site or the electronic mail message from the Copyright Royalty Board confirming receipt of the claim as proof that a claim submitted online through the Copyright Royalty Board Web site was received timely in the Board's server. No other offer of proof will be accepted in lieu thereof.

**§ 360.25 Copies of claims.**

A claimant shall, for each claim submitted to the Copyright Royalty Board by hand delivery or by mail, file an original and one copy of the claim to digital audio recording devices and media royalty payments.

Dated: May 19, 2005.

**Bruce G. Forrest,**

*Interim Chief Copyright Royalty Judge,  
Copyright Royalty Board.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

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