

good faith objections to the auditor's report pursuant to paragraph (h)(2) of this section and the net aggregate underpayment made by the statutory licensee on the basis of that explanation is not more than [ten] percent and not less than [five] percent, the costs of the auditor shall be split evenly between the statutory licensee and the participating copyright owners." *Id.*

The Office is inclined to keep the provision providing for cost shifting where the auditor concludes there was a net aggregate underpayment of more than ten percent. But after further analysis, we question whether the provision providing for cost splitting should be included in the final rule. Under the proposed rule, the determination of whether there has been a net aggregate underpayment would be based on the auditor's final report, *i.e.*, after the auditor has evaluated the licensee's "written explanation of its good faith objections" to the initial report. If the auditor considered and rejected those objections, it is unclear why they should gain renewed significance for the purpose of allocating costs. Would it make more sense to adopt a simple rule that the copyright owners would pay the audit costs if the final report concludes that the underpayment is ten percent or less, and the licensee would pay the cost if the final report concludes that the underpayment is more than ten percent (with the qualification that the licensee would never be required to pay costs that exceed the amount of the underpayment identified in the final report)?

Second, the proposed rule states that "if a court, in a final judgment (*i.e.*, after all appeals have been exhausted) concludes that the statutory licensee's net aggregate underpayment, if any, was [ten] percent or less, the participating copyright owner(s) shall reimburse the licensee, within [sixty] days of the final judgment, for any costs of the auditor that the licensee has paid." 78 FR at 27152. In the Second NRPM the Office assumed that if the licensee disagrees with the auditor's conclusions, the licensee might seek a declaratory judgment of non-infringement and an order directing the copyright owners to reimburse the licensee for the cost of the audit. See 78 FR at 27149. Do the parties in fact expect to be engaged in this sort of litigation as an outgrowth of the audit process? Do stakeholders anticipate that a royalty underpayment or overpayment would be addressed in a federal infringement (or non-infringement) action? Have the stakeholders given any thought to whether or how the statute of limitations might affect such claims?

Should the appropriate remedy in any such proceeding, including reimbursement of audit costs, be left to the court?

In any event, if it is necessary to include a provision requiring the copyright owners to reimburse the licensee, we are interested in the stakeholders' views on alternate ways in which this might be accomplished, given the concerns expressed by some commenters about the potential difficulty of recovering costs from multiple copyright owners in the event an auditor's findings are overturned. See AT&T Second Comment at 2; ACA Second Comment at 3-4. If the licensee disagrees with the auditor's conclusions, should the licensee place the cost of the audit procedure into escrow pending the resolution of any litigation between the licensee and the copyright owners? Should the licensee be required to release those funds to the copyright owners if the parties fail to take legal action within a specified period of time? If so, what would be a reasonable amount of time for the funds to remain in escrow?

III. Requests To Participate in the Public Roundtable

The Office invites copyright owners, cable operators, satellite carriers, accounting professionals, and other interested parties to participate in the public roundtable to address these issues. The Office is particularly interested in hearing from accounting professionals with experience and expertise regarding auditing procedures and statistical sampling techniques. The Office encourages parties that share interests and views to designate common spokespeople to discuss the topics listed in this notice. The Office also encourages copyright owners and licensees to confer with each other prior to the meeting to identify common ground or areas of disagreement concerning these issues.

Persons wishing to participate in the discussion should submit a request electronically no later than June 26, 2014 using the form posted on the Office's Web site at <http://www.copyright.gov/docs/soaaudit/public-roundtable/>. If electronic submission is not feasible, please contact the Office at (202) 707-8350 for special instructions. Seating in the room where the roundtable will be held is limited and will be offered first to persons who submitted a timely request to participate. To the extent available, observer seats will be offered on a first-come, first-served basis on the day of the meeting.

Parties do not need to submit written comments or prepared testimony in order to participate in the public roundtable. However, the Office strongly encourages participants to familiarize themselves with the Notices of Proposed Rulemaking and the Interim Rule that the Office issued in this proceeding, as well as the questions presented in this notice and the comments that have been submitted to date.

Dated: May 28, 2014.

Jacqueline C. Charlesworth,
General Counsel and Associate Register of
Copyrights.

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NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: June 2014

TIME AND DATES: All meetings are held at 2:00 p.m.: Tuesday, June 3; Wednesday, June 4; Tuesday, June 10; Wednesday, June 11; Thursday, June 12; Tuesday, June 17; Wednesday, June 18; Thursday, June 19; Tuesday, June 24; Wednesday, June 25; Thursday, June 26.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Henry Breiteneicher, Associate Executive Secretary, (202) 273-2917.

Dated: May 30, 2014.

William B. Cowen,
Solicitor.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange