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by order of the Copyright Royalty Judges.

(d) *Binding effect; time limit.* The Copyright Royalty Judges will not issue a final determination in a proceeding where the discretionary 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 Judges 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 Judges, 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 Judges and will be applied by them in their final determination in the relevant proceeding.

[71 FR 53330, Sept. 11, 2006]

## § 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 Judges 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 Judges, 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 Judges, 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 Judges within 30 days after the Register of Copyrights has received all of the briefs or comments of the participants. The Copy-

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right Royalty Judges 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. 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 Judges and will be applied by them in their final determination in the relevant proceeding.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53331, Sept. 11, 2006]

## § 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 Judges of that determination. The Copyright Royalty Judges 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.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53331, Sept. 11, 2006]

## PART 355—ADMINISTRATIVE ASSESSMENT PROCEEDINGS

Sec.

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AUTHORITY: 17 U.S.C. 801; 17 U.S.C. 115.

SOURCE: 84 FR 32308, July 8, 2019, unless otherwise noted.

## § 355.1 Proceedings in general.

(a) *Scope.* This section governs proceedings before the Copyright Royalty Judges to determine or adjust the Administrative Assessment pursuant to the Copyright Act, 17 U.S.C. 115(d), including establishing procedures to enable the Copyright Royalty Judges to

make necessary evidentiary or procedural rulings.

(b) *Rulings.* The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings during any proceeding under this section and may, before commencing a proceeding under this section, make any rulings that will apply to proceedings to be conducted under this section.

(c) *Role of Chief Judge.* The Chief Copyright Royalty Judge, or an individual Copyright Royalty Judge designated by the Chief Copyright Royalty Judge, shall:

- (1) Administer an oath or affirmation to any witness; and
- (2) Rule on objections and motions.

#### § 355.2 Commencement of proceedings.

(a) *Commencement of initial Administrative Assessment proceeding.* The Copyright Royalty Judges shall commence a proceeding to determine the initial Administrative Assessment by publication no later than July 8, 2019, of a notice in the FEDERAL REGISTER seeking the filing of petitions to participate in the proceeding.

(b) *Adjustments of the Administrative Assessment.* Following the determination of the initial Administrative Assessment, the Mechanical Licensing Collective, the Digital Licensee Coordinator, if any, and interested copyright owners, Digital Music Providers, or Significant Nonblanket Licensees may file a petition with the Copyright Royalty Judges to commence a proceeding to adjust the Administrative Assessment. Any petition for adjustment of the Administrative Assessment must be filed during the month of May and may not be filed earlier than 1 year following the most recent publication in the FEDERAL REGISTER of a determination of the Administrative Assessment by the Copyright Royalty Judges. The Copyright Royalty Judges shall accept a properly filed petition under this paragraph (b) as sufficient grounds to commence a proceeding to adjust the Administrative Assessment and shall publish a notice in the FEDERAL REGISTER in the month of June seeking petitions to participate in the proceeding.

(c) *Required participants.* The Mechanical Licensing Collective and the Dig-

ital Licensee Coordinator designated by the Register of Copyrights in accordance with 17 U.S.C. 115(d)(5) shall each file a petition to participate and shall participate in each Administrative Assessment proceeding under this section.

(d) *Other eligible participants.* A copyright owner, Digital Music Provider, or Significant Nonblanket Licensee may file a petition to participate in a proceeding under paragraph (a) or (b) of this section. The Copyright Royalty Judges shall accept petitions to participate filed under this paragraph (d) unless the Judges find that the petitioner lacks a significant interest in the proceeding.

(e) *Petitions to participate.* Each petition to participate filed under this section must include:

- (1) A filing fee of \$150;
- (2) The full name, address, telephone number, and email address of the petitioner;
- (3) The full name, address, telephone number, and email address of the person filing the petition and of the petitioner's representative, if either differs from the filer; and
- (4) Factual information sufficient to establish that the petitioner has a significant interest in the determination of the Administrative Assessment.

(f) *Notice of identity of petitioners.* The Copyright Royalty Judges shall give notice to all petitioners of the identity of all other petitioners.

(g) *Proceeding Schedule.* (1) The Copyright Royalty Judges shall establish a schedule for the proceeding, which shall include dates for:

- (i) A first negotiation period of 60 days, beginning on the date of commencement of the proceeding;
- (ii) Filing of the opening submission by the Mechanical Licensing Collective described in § 355.3(b) or (c), with concurrent production of required documents and disclosures;
- (iii) A period of 60 days, beginning on the day after the date the Mechanical Licensing Collective files its opening submission, for the Digital Licensee Coordinator and any other participant in the proceeding, other than the Mechanical Licensing Collective, to serve discovery requests and complete discovery pursuant to § 355.3(d);

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(iv) Filing of responsive submissions by the Digital Licensee Coordinator and any other participant in the proceeding, with concurrent production of required documents and disclosures;

(v) A period of 60 days, beginning on the day after the due date for filing responsive submissions, for the Mechanical Licensing Collective to serve discovery requests and complete discovery of the Digital Licensee Coordinator and any other participant in the proceeding pursuant to § 355.3(g);

(vi) A second negotiation period of 14 days, commencing on the day after the end of the Mechanical Licensing Collective's discovery period;

(vii) Filing of a reply submission, if any, by the Mechanical Licensing Collective;

(viii) Filing of a joint pre-hearing submission by the Mechanical Licensing Collective, the Digital Licensee Coordinator, and any other participant in the hearing; and

(ix) A hearing on the record.

(2) The Copyright Royalty Judges may, for good cause shown and upon reasonable notice to all participants, modify the schedule, except no participant in the proceeding may rely on a schedule modification as a basis for delaying the scheduled hearing date. The Copyright Royalty Judges may alter the hearing schedule only upon a showing of extraordinary circumstances. No alteration of the schedule shall change the due date of the determination.

**§ 355.3 Submissions and discovery.**

(a) *Protective orders.* During the first negotiation period, the Mechanical Licensing Collective, the Digital Licensee Coordinator, and any other participants that are represented by counsel shall negotiate and agree upon a written protective order to preserve the confidentiality of any confidential documents, depositions, or other information exchanged or filed by the participants in the proceeding. No later than 15 days after the Judges' identification of participants, proponents of a protective order shall file with the Copyright Royalty Judges a motion for review and approval of the order. No participant in the proceeding shall distribute or exchange confidential documents, depositions, or other informa-

tion with any other participant in the proceeding until the receiving participant affirms in writing its consent to the protective order governing the proceeding.

(b) *Submission by the Mechanical Licensing Collective in the initial Administrative Assessment proceeding.* (1) The Mechanical Licensing Collective shall file an opening submission, in accordance with the schedule the Copyright Royalty Judges adopt pursuant to § 355.2(g), setting forth and supporting the Mechanical Licensing Collective's proposed initial Administrative Assessment. The opening submission shall consist of a written statement, including any written testimony and accompanying exhibits, and include reasons why the proposed initial Administrative Assessment fulfills the requirements in 17 U.S.C. 115(d)(7).

(2) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall produce electronically and deliver by email to the other participants in the proceeding documents that identify and demonstrate:

(i) Costs, collections, and contributions as required by 17 U.S.C. 115(d)(7) through the License Availability Date and for the three calendar years following thereafter;

(ii) The reasonableness of the Collective Total Costs;

(iii) The Collective's processes for requesting proposals, inviting bids, ranking and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), including processes for ensuring the absence of overlapping ownership or other overlapping economic interests between the Collective or its members and any selected contracting or sub-contracting party; and

(iv) The reasons why the proposal fulfills the requirements in 17 U.S.C. 115(d)(7).

(3) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall provide electronically and deliver by email to the other participants in the proceeding written disclosures that:

(i) List the individuals with material knowledge of, and availability to provide testimony concerning, the proposed initial Administrative Assessment; and

(ii) For each listed individual, describe the subject(s) of his or her knowledge.

(c) *Submission by the Mechanical Licensing Collective in proceedings to adjust the Administrative Assessment.* (1) The Mechanical Licensing Collective shall file an opening submission according to the schedule the Copyright Royalty Judges adopt pursuant to §355.2(g). The opening submission shall set forth and support the Mechanical Licensing Collective's proposal to maintain or adjust the Administrative Assessment, including reasons why the proposal fulfills the requirements in 17 U.S.C. 115(d)(7). The opening submission shall include a written statement, any written testimony and accompanying exhibits, including financial statements from the three most recent years' operations of the Mechanical Licensing Collective with annual budgets as well as annual actual income and expense statements.

(2) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall produce electronically and deliver by email to the other participants in the proceeding documents that identify and demonstrate:

(i) Costs, collections, and contributions as required by 17 U.S.C. 115(d)(7) for the preceding three calendar years and the three calendar years following thereafter;

(ii) For the preceding three calendar years, the amount of actual Collective Total Costs that was not sufficiently funded by the prior Administrative Assessment, or the amount of any surplus from the prior Administrative Assessment after funding actual Collective Total Costs;

(iii) Actual collections from Digital Music Providers and Significant Non-blanket Licensees for the preceding three calendar years and anticipated collections for the three calendar years following thereafter;

(iv) The reasonableness of the Collective's processes for requesting proposals, inviting bids, rank-

ing and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), including processes for ensuring the absence of overlapping ownership or other overlapping economic interests between the Collective or its members and any selected contracting or sub-contracting party.

(3) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall provide electronically and deliver by email to the other participants in the proceeding written disclosures that:

(i) List the individuals with material knowledge of, and availability to provide testimony concerning, the proposed adjusted Administrative Assessment; and

(ii) For each listed individual, describe the subject(s) of his or her knowledge.

(d) *First discovery period.* (1) During the first discovery period, the Digital Licensee Coordinator and any other participant in the proceeding other than the Mechanical Licensing Collective, acting separately or represented jointly to the extent permitted by the concurrence of their interests, may serve requests for additional documents on the Mechanical Licensing Collective and any other participant in the proceeding. Any document request shall be limited to documents that are Discoverable.

(2) The Digital Licensee Coordinator and any other participant in the proceeding, other than the Mechanical Licensing Collective, may notice and take depositions as provided in paragraph (e) of this section.

(e) *Depositions.* The Digital Licensee Coordinator may give notice of and take up to five depositions during the first discovery period. To the extent any other participant eligible to take discovery during the first discovery period and whose interests may not be fully represented by either the Mechanical Licensing Collective or the Digital Licensee Coordinator seeks to notice and take a deposition, that participant shall first notify all other proceeding participants and the participants shall attempt, in good faith, to accommodate by agreement of the parties any deposition for which good cause is

shown. If, after good faith discussions, the participants are unable to agree with respect to any such additional deposition, the participant seeking to take the deposition may file a motion pursuant to paragraph (h) of this section. The Mechanical Licensing Collective may give notice of and take up to five depositions during the second discovery period. Any deposition under this paragraph (e) shall be no longer than seven hours in duration on the record (exclusive of adjournments for lunch and other personal needs), with each deponent subject to a maximum of one seven-hour deposition in any Administrative Assessment proceeding, except as otherwise extended in this part, or upon a motion demonstrating good cause to extend the hour and day limits. In addition to the party noticing the deposition, any other parties to the proceeding may attend any depositions and shall have a right, but not an obligation, to examine the deponent during the final hour of the deposition, (except as that allocation of time may otherwise be stipulated by agreement of all participants attending the deposition), provided that any participant exercising its right to examine a deponent provides notice of that intent no later than two days prior to the scheduled deposition date. The initial notice of deposition under this paragraph (e) must be delivered by email or other electronic means to all participants in the proceeding, and such notice shall be sent no later than seven days prior to the scheduled deposition date, unless the deposition is scheduled to occur less than seven days after the date of the notice by agreement of the parties and the deponent. An individual is properly named as a deponent if that individual likely possesses information that meets the standards for document production under this part.

(f) *Responsive submissions by the Digital Licensee Coordinator and other participants.* The Digital Licensee Coordinator and any other participant in the proceeding shall file responsive submissions with the Copyright Royalty Judges in accordance with the schedule adopted by the Copyright Royalty Judges.

(1) Responsive submissions of the Digital Licensee Coordinator, and any

other participant in the proceeding, shall consist of a written statement, including any written testimony and accompanying exhibits, stating the extent to which the filing participant agrees with the Administrative Assessment proposed by the Mechanical Licensing Collective. If the filing participant disagrees with all or part of the Administrative Assessment proposed by the Mechanical Licensing Collective, then the written statement, including any written testimony and accompanying exhibits, shall include analysis necessary to demonstrate why the Administrative Assessment proposed by the Mechanical Licensing Collective does not fulfill the requirements set forth in 17 U.S.C. 115(d)(7).

(2) Concurrently with the filing of a responsive submission indicating disagreement with the Administrative Assessment proposed by the Mechanical Licensing Collective, the filing participant shall produce electronically and deliver by email to the participants in and parties to the proceeding documents that demonstrate why the Administrative Assessment proposed by the Mechanical Licensing Collective does not fulfill the requirements set forth in 17 U.S.C. 115(d)(7).

(3) Concurrently with the filing of responsive submission(s), the filing participant shall provide electronically and deliver by email to the other participants in the proceeding written disclosures that:

(i) List the individuals with material knowledge of, and availability to provide testimony concerning, the reasons why the Administrative Assessment proposed by the Mechanical Licensing Collective does not fulfill the requirements set forth in 17 U.S.C. 115(d)(7); and

(ii) For each listed individual, describe the subject(s) of his or her knowledge.

(g) *Second discovery period.* (1) During the discovery period described in § 355.2(g)(1)(v), the Mechanical Licensing Collective may serve requests for additional documents on the Digital Licensee Coordinator and other parties to the proceeding. Such requests shall be limited to documents that are Discoverable.

(2) The Mechanical Licensing Collective may notice and take depositions as provided in paragraph (e) of this section.

(h) *Discovery disputes.* (1) Prior to invoking the procedures set forth in this paragraph (h), any participant that seeks intervention of the Copyright Royalty Judges to resolve a discovery dispute must first attempt in good faith to resolve the dispute between it and the other proceeding participant(s). All proceeding participants have a duty to, and shall, cooperate in good faith to resolve any such disputes without involvement of the Copyright Royalty Judges to the extent possible.

(2) In the event that two or more participants are unable to resolve a discovery dispute after good-faith consultation, a participant requesting discovery may file a motion and brief of no more than 1,500 words with the Copyright Royalty Judges. The motion must include a certification that the participant filing the motion attempted to resolve the dispute at issue in good faith, but was unable to do so. For a dispute involving the provision of documents or deposition testimony, the brief shall detail the reasons why the documents or deposition testimony are Discoverable.

(3) The responding participant may file a responsive brief of no more than 1,500 words within two business days of the submission of the initial brief.

(4) Absent unusual circumstances, the Copyright Royalty Judges will rule on the dispute within three business days of the filing of the responsive brief. Upon reasonable notice to the participants, the Chief Copyright Royalty Judge, or an individual Copyright Royalty Judge designated by the Chief Copyright Royalty Judge, may consider and rule on any discovery dispute in a telephone conference with the relevant participants.

(i) *Reply submissions by the Mechanical Licensing Collective.* The Mechanical Licensing Collective may file a written reply submission addressed only to the issues raised in any responsive submission(s) filed under paragraph (f) of this section in accordance with the schedule adopted by the Copyright Royalty Judges, which reply may include written testimony, documentation, and

analysis addressed only to the issues raised in responsive submission(s).

(j) *Joint pre-hearing submission.* No later than 14 days prior to the commencement of the hearing, the Mechanical Licensing Collective, the Digital Licensee Coordinator, and any other parties to the proceeding shall file jointly a written submission with the Copyright Royalty Judges, stating:

(1) Specific areas of agreement between the parties; and

(2) A concise statement of issues remaining in dispute with respect to the determination of the Administrative Assessment.

#### § 355.4 Negotiation periods.

(a) *First negotiation period.* The Mechanical Licensing Collective and the Digital Licensee Coordinator shall, and other participants may, participate in good faith in a first negotiation period in an attempt to reach an agreement with respect to any issues in dispute regarding the Administrative Assessment, commencing on the day of commencement under §355.2(a) or (b), as applicable, and lasting 60 days. The Mechanical Licensing Collective shall advise the other participants, via email, about the negotiations and invite them to participate, as those participants appear in the participant list in eCRB.

(b) *Second negotiation period.* The Mechanical Licensing Collective and the Digital Licensee Coordinator shall, and all other participants may, participate in good faith in a second negotiation period commencing on a date set by the Copyright Royalty Judges and lasting 14 days.

(c) *Written notification regarding result of negotiations.* By the close of a negotiation period, the Mechanical Licensing Collective and the Digital Licensee Coordinator shall file in eCRB a joint written notification indicating

(1) Whether they have reached an agreement, in whole or in part, with respect to issues in dispute regarding the Administrative Assessment,

(2) The details of any agreement,

(3) A description of any issues as to which they have not reached agreement, and

(4) A list of other participants that intend to join in any proposed settlement resulting from the agreement of

the Mechanical Licensing Collective and the Digital Licensee Coordinator. Participants, other than the settling parties, may, within five days following the filing of a proposed settlement, file in eCRB comments (not to exceed ten pages and not to exceed 2500 words exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery) about the proposed settlement. The settling parties may, within five days following the comment deadline, file in eCRB a joint response to any comments.

**§ 355.5 Hearing procedures.**

(a) *En banc panel.* The Copyright Royalty Judges shall preside *en banc* over any hearing to determine the reasonableness of and the allocation of responsibility to contribute to the Administrative Assessment.

(b) *Attendance and participation.* The Mechanical Licensing Collective, through an authorized officer or other managing agent, and the Digital Licensee Coordinator, if any, through an authorized officer or other managing agent, shall attend and participate in the hearing. Any other entity that has filed a valid Petition to Participate and that the Copyright Royalty Judges have not found to be disqualified shall participate in an Administrative Assessment proceeding hearing. If the Copyright Royalty Judges find, *sua sponte* or upon motion of a participant, that a participant has failed substantially to comply with any of the requirements of this part, the Copyright Royalty Judges may exclude that participant from participating in the hearing; provided, however, that the Mechanical Licensing Collective and the Digital Licensee Coordinator shall not be subject to exclusion.

(c) *Admission of written submissions, deposition transcripts, and other documents.* Subject to any valid objections of a participant, the Copyright Royalty Judges shall admit into evidence at an Administrative Assessment hearing the complete initial, responsive, and reply submissions that the participants have filed. Participants shall not file deposition transcripts, but may utilize deposition transcripts for the purposes and under the conditions described in Fed.

R. Civ. P. 32 and interpreting case law. Any participant may expand upon excerpts at the hearing or counter-designate excerpts in the written record to the extent necessary to provide appropriate context for the record. During the hearing, upon the oral request of any participant, any document proposed as an exhibit by any participant shall be admitted into evidence so long as that document was produced previously by any participant, subject only to a valid evidentiary objection.

(d) *Argument and examination of witnesses.* An Administrative Assessment hearing shall consist of the oral testimony of witnesses at the hearing and arguments addressed to the written submissions and oral testimony proffered by the participants, except that the Copyright Royalty Judges may, *sua sponte* or upon written or oral request of a participant, find good cause to dispense with the oral direct, cross, or redirect examination of a witness, and rely, in whole or in part, on that witness's written testimony. The Copyright Royalty Judges may, at their discretion, and in a procedure the Judges describe in a prehearing Scheduling Order, and after consideration of the positions of counsel for the participants, require expert witnesses to be examined concurrently by the Judges and/or the attorneys. If the Judges so order, the expert witnesses may then testify through a colloquy among themselves, including questions addressed to each other, as limited and directed by the Judges and subject to valid objections by counsel and ruled upon by the Judges. The concurrent examination procedure may be utilized in conjunction with, or in lieu of, traditional direct, cross, redirect and (with leave of the Judges) further direct or cross examination. In the absence of any order directing the use of concurrent examination, only the traditional form of examination described above shall be utilized. Only witnesses who have submitted written testimony or who were deposed in the proceeding may be examined at the hearing. A witness's oral testimony shall not exceed the subject matter of his or her written or deposition testimony. Unless the Copyright Royalty Judges, on

motion of a participant, order otherwise, no witness, other than an expert witness or a person designated as a party representative for the proceeding, may listen to, or review a transcript of, testimony of another witness or witnesses prior to testifying.

(e) *Objections.* Participants may object to evidence on any proper ground, by written or oral objection, including on the ground that a participant seeking to offer evidence for admission has failed without good cause to produce the evidence during the discovery process. The Copyright Royalty Judges may, but are not required to, admit hearsay evidence to the extent they deem it appropriate.

(f) *Transcript and record.* The Copyright Royalty Judges shall designate an official reporter for the recording and transcribing of hearings. Anyone wishing to inspect the transcript of a hearing, to the extent the transcript is not restricted under a protective order, may do so when the hearing transcript is filed in the Copyright Royalty Judges' electronic filing and case management system, eCRB, at <https://app.crb.gov> after the hearing concludes. The availability of restricted portions of any transcript shall be described in the protective order. Any participant desiring daily or expedited transcripts shall make separate arrangements with the designated court reporter.

#### § 355.6 Determinations.

(a) *How made.* The Copyright Royalty Judges shall determine the amount and terms of the Administrative Assessment in accordance with 17 U.S.C. 115(d)(7). The Copyright Royalty Judges shall base their determination on their evaluation of the totality of the evidence before them, including oral testimony, written submissions, admitted exhibits, designated deposition testimony, the record associated with any motions and objections by participants, the arguments presented, and prior determinations and interpretations of the Copyright Royalty Judges (to the extent those prior determinations and interpretations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty

Judges pursuant to 17 U.S.C. 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights made pursuant to 17 U.S.C. 802(f)(1)(D), or with a decision of the U.S. Court of Appeals for the D.C. Circuit).

(b) *Timing.* The Copyright Royalty Judges shall issue and cause their determination to be published in the FEDERAL REGISTER not later than one year after commencement of the proceeding under § 355.2(a) or, in a proceeding commenced under § 355.2(b), during June of the calendar year following the commencement of the proceeding.

(c) *Effectiveness.* (1) The initial Administrative Assessment determined in the proceeding under § 355.2(a) shall be effective as of the License Availability Date and shall continue in effect until the Copyright Royalty Judges determine or approve an adjusted Administrative Assessment under § 355.2(b).

(2) Any adjusted Administrative Assessment determined in a proceeding under § 355.2(b) shall take effect January 1 of the year following its publication in the FEDERAL REGISTER.

(d) *Adoption of voluntary agreements.* In lieu of reaching and publishing a determination, the Copyright Royalty Judges shall approve and adopt the amount and terms of an Administrative Assessment that has been negotiated and agreed to by the Mechanical Licensing Collective and the Digital Licensee Coordinator pursuant to § 355.4. Notwithstanding the negotiation of an agreed Administrative Assessment, however, the Copyright Royalty Judges may, for good cause shown, reject an agreement. If the Copyright Royalty Judges reject a negotiated agreed Administrative Assessment, they shall proceed with adjudication in accordance with the schedule in place in the proceeding. Rejection by the Copyright Royalty Judges of a negotiated agreed Administrative Assessment shall not prejudice the parties' ability to continue to negotiate and submit to the Copyright Royalty Judges an alternate agreed Administrative Assessment or resubmit an amended prior negotiated agreement that addresses the Judges' reasons for initial rejection at any time, including during a hearing or after a hearing at

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any time before the Copyright Royalty Judges issue a determination.

(e) *Continuing authority to amend.* The Copyright Royalty Judges shall retain continuing authority to amend a determination of an Administrative Assessment to correct technical or clerical errors, or modify the terms of implementation, for good cause shown, with any amendment to be published in the FEDERAL REGISTER.

**§ 355.7 Definitions.**

Capitalized terms in this part that are defined terms in 17 U.S.C. 115(e) shall have the same meaning as set forth in 17 U.S.C. 115(e). In addition, for purposes of this part, the following definitions apply:

*Digital Licensee Coordinator* shall mean the entity the Register of Copyrights designates as the Digital Licensee Coordinator pursuant to 17 U.S.C. 115(d)(5)(B)(iii), or if the Register makes no such designation, interested Digital Music Providers and Significant Nonblanket Licensees rep-

resenting more than half of the market for uses of musical works in Covered Activities, acting collectively.

*Discoverable* documents or deposition testimony are documents or deposition testimony that are:

- (1) Nonprivileged;
- (2) Relevant to consideration of whether a proposal or response thereto fulfills the requirements in 17 U.S.C. 115(d)(7); and
- (3) Proportional to the needs of the proceeding, considering the importance of the issues at stake in the proceeding, the requested participant's relative access to responsive information, the participants' resources, the importance of the document or deposition request in resolving or clarifying the issues presented in the proceeding, and whether the burden or expense of producing the requested document or deposition testimony outweighs its likely benefit. Documents or deposition testimony need not be admissible in evidence to be Discoverable.