

State highway department indicating its approval and any stipulations it considers desirable for the additional right-of-way.

(b) Future relocation or change of the additional right-of-way made necessary by the State highway use will be accomplished at the expense of the additional right-of-way permittee.

§ 14.52 Termination of highway use

(a) If at any time the need for any such lands or materials for highway purposes pursuant to a highway easement deed will no longer exist, notice of the fact will be given by the State highway department to the Secretary of Transportation and such lands or materials will revert to the control of the Secretary of the Interior.

(b) Upon receipt of such notice, the Secretary of Transportation will immediately notify the Secretary of the Interior and take steps as necessary to revoke and abandon the highway easement deed and revest the Secretary of the Interior with clear and exclusive title of unencumbered land.

Dated: November 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the Office of the **Federal Register** on November 24, 1997.

[FR Doc. 97-31262 Filed 11-28-97; 8:45 am]

BILLING CODE 4310-70-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96-6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment additional settlement proposals for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license and proposed regulations for implementing these rates.

DATES: Comments and Notices of Intent to Participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. 17 U.S.C. 118(c). The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates. 57 FR 60954 (December 22, 1992).

Section 118(b) provides that any copyright owner and any public broadcasting entity may negotiate the rates and terms for the compulsory license, or in the absence of a negotiated license,

The Librarian of Congress shall, pursuant to Chapter 8, convene a copyright arbitration royalty panel to determine and publish in the **Federal Register** a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress * * *

Interested parties who submit proposals for adjusting the terms and rates for the section 118 license directly to the Librarian of Congress may petition the Librarian to submit these proposals to a public notice and comment proceeding, whereby copyright owners and users that would

be affected by the proposals are given the opportunity to challenge them. 37 CFR 251.63. Any party who objects to the proposed terms and rates must submit, in turn, its challenges by a date certain, and must be entitled to participate in the CARP proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by an interested party who will not participate in a CARP proceeding, the Librarian may adopt the terms and rates of the proposals.

Accordingly, interested copyright owners and users of these works may file either a voluntary agreement or a joint proposal outlining the adjustments to the terms and rates for the section 118 license; or in the case of unaffiliated copyright owners,¹ the users may submit their proposals for the adjustment of the terms and rates of the section 118 license directly to the Librarian of Congress. See 62 FR 51619 (October 2, 1997). A joint proposal differs significantly from a voluntary settlement. The parties to a voluntary agreement represent all persons who would be affected by the agreement and the parties have the authority to bind their members. In a joint proposal, the parties to the agreement do not represent all persons who would be affected by the agreement, or if they do, at least one of the parties does not have the authority to bind its members.

II. This Proceeding

A. The Interested Parties

Seven parties filed notices of intent to participate with the Copyright Office in a proceeding to adjust the terms and rates of the section 118 license. Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, participated in the negotiations of the joint proposals which certain parties filed with the Office on October 1, 1997. The following parties represent users of copyrighted works in this proceeding:

Public Broadcasting Services (PBS)—a non-profit membership corporation which, among other things, represents the interests of its member noncommercial, educational broadcasting stations in rate setting and royalty distribution proceedings in the United States, Canada, and in Europe.

National Public Radio (NPR)—a non-profit membership organization dedicated to the development of a

¹ An unaffiliated copyright owner is one whose interests are not represented by a performing rights society, or by any other organization participating in the proceeding.

diverse noncommercial educational radio programming service.

National Religious Broadcasters Music License Committee (NRBMLC)—an organization that represents noncommercial educational radio broadcasters that are associated as members of National Religious Broadcasters.

The American Council on Education (ACE)—an association representing over 1,500 colleges, universities and associations in higher education, some of which operate noncommercial educational radio broadcast stations.

The National Federation of Community Broadcasters (NFCB)—a national membership organization representing over 85 independent, community based noncommercial radio broadcasters.

The following parties represent the owners of the copyrighted works:

American Society of Composers, Authors and Publishers (ASCAP)—a performing rights society which, among other things, licenses on a non-exclusive basis the right of nondramatic public performance of its members' copyrighted musical compositions.

Broadcast Music, Inc. (BMI)—a performing rights society which, among other things, licenses the non-exclusive right to perform publicly the copyrighted musical compositions of its writers and publisher affiliates.

SESAC, Inc.—a performing rights society which, among other things, licenses the non-exclusive right to perform publicly the copyrighted musical compositions of its writers and publisher affiliates.

National Music Publishers Association, Inc. (NMPA) and The Harry Fox Agency, Inc. (HFA)—NMPA is an organization representing the interests of over 600 commercially active American music publishers, and the HFA is a wholly owned subsidiary which acts as a licensing agent for over 17,000 publishers.

B. Chronology

On October 18, 1996, the Library published a notice in the **Federal Register** requesting comments from interested parties as to the need for a CARP proceeding to adjust the section 118 terms and rates. 61 FR 54459 (October 18, 1996). The notice also announced the dates of the voluntary negotiation period, a precontroversy discovery schedule, and an initiation date for a CARP. At the request of the parties, the Library vacated the schedule and instructed the parties to appear at the Library on May 1, 1997, to inform the Office of the progress of their settlement negotiations.

The parties appeared at the May 1 status conference and requested additional time. The Office granted this request, but scheduled another status meeting in order to monitor the progress of the negotiations. The staff from the Copyright Office met with the parties again on July 24, 1997, at which time the parties identified the need for a CARP proceeding. Subsequently, the Library announced a second schedule setting dates for the precontroversy discovery period and for convening the CARP. Order in Docket No. 96-4 CARP NCBRA (July 30, 1997).

In accordance with the precontroversy schedule, on September 2, 1997, the Copyright Office received proposed rates and terms for the payment of royalty fees to "unaffiliated copyright owners," from the National Religious Broadcasters Music License Committee (NRBMLC), the Public Broadcasting Service, and the National Public Radio. Because the identity of such copyright owners is not known, copyright users are unable to negotiate with them to reach private agreements, and their interests would not be represented if the matter were submitted to a CARP. Accordingly, on October 2, 1997, the Copyright Office published the proposed terms and rates for public comment. 62 FR 51619 (Oct. 2, 1997). The notice elicited no comments opposing the proposed rates for the "unaffiliated copyright owners."

Regulatory language implementing these proposals has been included in this document. Although further comment on the substance of these regulations is precluded, parties may file comments with the Copyright Office concerning the implementation of the proposals in the regulatory language.

Negotiations continued throughout the precontroversy settlement period. As a result, on October 1, 1997, certain parties filed notices of settlement and joint proposals for further adjusting the rates for the payment of the noncommercial compulsory license royalties, pursuant to 17 U.S.C. 118.

1. Notices of Settlement

SESAC, Inc., on behalf of its affiliated songwriters and music publishers, and the National Public Radio (NPR) and the Public Broadcasting Service (PBS), on behalf of the noncommercial educational broadcast stations they represent, reached an agreement on the rates and terms of a voluntary license between them covering the period January 1, 1998, through December 31, 2002. The Harry Fox Agency, Inc. (HFA), on behalf of its affiliated music publishers and other copyright proprietors, and NPR/PBS, on behalf of

the noncommercial broadcast stations they represent in this proceeding, also reached an agreement between them covering the same period, January 1, 1998, through December 31, 2002.

These license agreements will be given effect in lieu of any determination by the Librarian of Congress, provided that the copies of the license agreements are filed with the Copyright Office within thirty days of the execution thereof. See 17 U.S.C. 118(b)(2). Accordingly, with respect to the use by PBS and NPR of musical compositions found in the SESAC repertory, or the use by PBS and NPR of copyrighted works whose owners are represented by The Harry Fox Agency, no regulations will be proposed.

2. Uncontested Proposal

The National Religious Broadcasters Music License Committee (NRBMLC) submitted an uncontested proposal as its direct case for adjusting the current rates and terms for the recording of nondramatic musical works by noncommercial radio stations "other than in an NPR produced radio program." See 37 CFR 253.7(b)(4). The NRBMLC proposes that no adjustment be made to the rates and terms, which were in effect for the previous cycle. NRBMLC contends that the current rates and terms are "reasonable and that no circumstances exist that would warrant modification of these rates." On November 18, 1997, NRBMLC filed an amendment to its proposal adopting the same rates for this provision that apply to the works of an "unaffiliated copyright owner" similarly situated. See 62 FR 51619 (October 2, 1997).

3. Joint Proposals

a. Performances of Musical Works by Public Broadcasting Entities Licensed to Colleges and Universities Not Affiliated with NPR. SESAC and ACE have submitted a joint proposal which would increase the rate which applies to public broadcasting entities licensed to colleges and universities not affiliated with NPR to \$60 for 1998, subject to an annual cost of living adjustment thereafter. See 37 CFR 253.5(c)(3). ASCAP and ACE also submitted a joint proposal to the Librarian which proposes maintaining the current rate for college radio stations not affiliated with NPR, with an annual cost of living adjustment. See 37 CFR 253.5(c)(1). In addition, BMI, in its direct case, proposed "continuing its fee with respect to college and university radio stations not affiliated with NPR, subject to an annual cost of living adjustment permitted under 37 CFR 253.10 (1996)."

Direct Case of BMI at 2. See 37 CFR 253.5(c)(2).

Both ASCAP and BMI propose that the 1998 rates consist of the current rate with an annual cost of living increase, based upon the annual change in the Consumer Price Index (CPI)—the methodology adopted by the former Copyright Royalty Tribunal in the 1987 rate adjustment proceeding and maintained in the 1992 rate adjustment proceeding. 52 FR 49010 (December 29, 1987) and 57 FR 60954 (December 22, 1992). Assuming no party challenges the ASCAP and BMI proposals, new rates for ASCAP and BMI will be calculated based upon the change in the CPI, during the period between the first CPI subsequent to December 1, 1996, and the last CPI published prior to December 1, 1997. These rates will be published at the time the final rules are published in the **Federal Register**. No similar adjustment is necessary for the rate jointly proposed by SESAC and ACE, since their proposed rate already reflects an upward adjustment for the coming year. In each subsequent year covered by the terms of these proposals, an annual cost of living adjustment will be made to the royalty rate for performing the musical compositions in the ASCAP, BMI, and SESAC repertory.

The parties to these joint proposals submit that the proposed annual compulsory license fees are made on a nonprejudicial and nonprecedential basis. As the Copyright Royalty Tribunal did in the 1987 rate adjustment proceeding, and again in the 1992 rate adjustment proceeding, the Librarian recognizes that the joint proposals do not reflect any assessment by any of the parties of the absolute or relative value of the right of performance of music in the ASCAP, BMI, or SESAC repertory by college radio stations.

b. Performances of Musical Compositions by Public Broadcasting Stations Other Than NPR or College Stations. Joint proposals were submitted to adjust the rates which apply to public broadcasting radio stations which are not licensed to colleges and universities and which are not affiliated with NPR. SESAC, BMI, and ASCAP, each submitted separate joint proposals with the National Religious Broadcasters Music License Committee (NRBMLC) and the National Federation of Community Broadcasters (NFCB). The proposals continue the general trend of annual adjustments reflected in the current regulations, 37 CFR 253.6(c)(1)(2)(3), and have been made on a nonprejudicial and nonprecedential basis.

Therefore, the Librarian recognizes that the joint proposals do not reflect

any assessment by any of the parties of the absolute or relative value of the right of the performance of music in the ASCAP, BMI, or ASCAP repertory by community radio stations.

C. Comments and Notices of Intent To Participate

Any party who wishes to challenge the proposed rates must submit its written comments to the Librarian of Congress no later than close of business on December 31, 1997. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate. Failure to submit a Notice of Intent to Participate will preclude an interested party from participating in this proceeding and will preclude consideration of his or her written challenge. Any interested party that does submit a Notice of Intent to Participate will be contacted by the Librarian as to when his or her written direct case is due. It is the intention of the Librarian to include such parties in the CARP proceeding that shall commence on December 31, 1997.

The following proposed rules includes regulatory language to implement the proposals filed with the Library of Congress on September 2, 1997, and published in the **Federal Register** on October 2, 1997, for public comment pursuant to 37 CFR 251.63. The Copyright Office invites public comment on the proposed regulatory language implementing the earlier proposals, in addition to, the proposals discussed above. If no comments or Notices of Intent to Participate are received by close of business on the date for filing such comments, the proposed rates and terms shall become effective on January 1, 1998.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR part 253 as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is revised to read as follows:

§ 253.1 General.

This part 253 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1998, and ending on December 31, 2002. Upon compliance with 17 U.S.C. 118, and terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

3. Section 253.4 is amended by revising the introductory text, paragraph (a)(1) through (a)(8), and paragraph (c) to read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements, or compositions in the repertories of ASCAP, BMI or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(a) *Determination of royalty rates.* (1) For the performance of such a work in a feature presentation of PBS:

1998–2002\$211.53

(2) For the performance of such a work as background or theme music in a PBS program:

1998–2002\$53.59

(3) For the performance of such a work in a feature presentation of a station of PBS:

1998–2002\$18.08

(4) For the performance of such a work as background or theme music in a program of a station of PBS:

1998–2002\$3.81

(5) For the performance of such a work in a feature presentation of NPR:

1998–2002\$21.44

(6) For the performance of such a work as background or theme music in an NPR program:

1998–2002\$5.20

(7) For the performance of such a work in a feature presentation of a station of NPR:

1998–2002\$1.52

(8) For the performance of such work as background or theme music in a program of a station of NPR:

1998–2002\$1.54

* * * * *

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP or BMI covering the license period January 1, 1998, to December 31, 2002, to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

* * * * *

4. In § 253.5, paragraph (c)(3) is revised to read as follows:

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(3) For all such compositions in the repertory of SESAC, \$60 annually.

* * * * *

5. In § 253.6, paragraph (c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 1998, \$375; in 1999, \$390; in 2000, \$405; in 2001, \$420; in 2002, \$440.

(2) For all such compositions in the repertory of BMI, in 1998, \$375; in 1999, \$390; in 2000, \$405; in 2001, \$420; in 2002, \$440.

(3) For all such compositions in the repertory of SESAC, in 1998, \$78; in 1999, \$82; in 2000, \$86; in 2001, \$89; in 2002, \$92.

(4) For the performance of any other such compositions, in 1998 through 2002, \$1.

* * * * *

6. Section 253.7 is amended by revising paragraphs (a), (b)(1) (i) and (ii), and (b)(2), (4), and (5) to read as follows:

§ 253.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in 37 CFR subchapter B, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	1998–2002
Feature	\$106.04
Concert feature (per minute)	31.84
Background	53.59
Theme:	
Single program or first series program	53.59
Other series program	21.75

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	1998–2002
Feature	\$8.76
Concert feature (per minute)	2.30
Background	3.81

	1998–2002
Theme:	
Single program or first series program	3.81
Other series program	1.52

* * * * *

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	1998–2002
Feature	\$11.48
Concert feature (per half hour) ...	16.85
Background	5.75
Theme:	
Single program or first series program	5.75
Other series program	2.29

(3) * * *

(4) For such uses other than in a NPR-produced radio program:

	1998–2002
Feature	\$.74
Feature (concert)(per half	1.54
Background37

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002 shall be subject to the royalty rates established in this schedule.

* * * * *

7. In § 253.8, paragraphs (b)(1) and (f)(1) are revised as follows:

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

(A) For a featured display of a work.
1998-2002\$64.78

(B) For background and montage display.
1998-2002\$31.59

(C) For use of a work for program identification or for thematic use.
1998-2002\$127.71

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule.

1998-2002\$41.95

(ii) For such uses in other than PBS-distributed programs:

(A) For featured display of a work.
1998-2002\$41.95

(B) For background and montage display.
1998-2002\$21.51

(C) For use of a work for program identification or for thematic use.
1998-2002\$85.76

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1998-2002\$21.51

* * * * *

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: Second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, paragraph (a) is revised to read as follows:

§ 253.10 Cost of living adjustment.

(a) On December 1, 1998, the Librarian of Congress shall publish in the **Federal Register** a notice of the

change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1997, to the most recent Index published prior to December 1, 1998. On each December 1, thereafter the Librarian of Congress shall publish a notice of change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1 of that year.

* * * * *

Dated: November 18, 1997.

Marybeth Peters,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.

[FR Doc. 97-31295 Filed 11-26-97; 9:39 am]

BILLING CODE 1410-33-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96-4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a joint petition concerning the adjustment of the physical phonorecord and digital phonorecord delivery royalty rates and proposed regulations implementing these rates.

DATES: Comments and notices of intent to participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel;

William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

How Were the Current Royalty Rates and Terms Established for the Making and Distribution of a Physical Phonorecord and a Digital Phonorecord Delivery?

The mechanical compulsory license, 17 U.S.C. 115, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee pays the statutory rate. Until its demise in 1993, the Copyright Royalty Tribunal had authority to adjust the statutory rates for the making and distribution of physical phonorecords, and did so in 1987, see 52 FR 22637 (June 15, 1987), setting the rates and terms for the mechanical compulsory license for at least the next ten years.

The Copyright Act provides that, during the tenth calendar year, any copyright owner or user whose royalty rates are specified by the statutory license may file a petition requesting an adjustment to the rates and terms. 17 U.S.C. 803(a) (1) and (3). This ten-year cycle makes 1997 a window year for commencing a proceeding to further adjust the mechanical phonorecord compulsory license royalty rates.

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recording Act of 1995 (Digital Performance Act), Pub. L. 104-39, 109 Stat. 336, which extended the mechanical license to digital phonorecord deliveries. Congress passed this Act to maintain and reaffirm the mechanical rights of songwriters and music publishers in an era of emerging technology which makes delivery of digital phonorecords possible. Among other things, the Digital Performance Act confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes digital transmissions which constitute "digital phonorecord deliveries." 17 U.S.C. 115(c)(3).

The Digital Performance Act sets the royalty rate for all digital phonorecord deliveries made or authorized under the section 115 compulsory license on or before December 31, 1997, at the current