

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. This shall not apply in any instance where the Board has already disclosed to the public the content or the nature of its proposed action, or where the Board is required by law to make such disclosures on its own initiative prior to taking final Board action on such proposal; or

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Board of a particular case of formal agency adjudication, or otherwise involving a determination on the record after opportunity for a hearing.

#### **§ 507.5 Procedures for announcing meetings.**

(a) In the case of each meeting, the Board shall make public, at least one week before the meeting, the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Board determine by a recorded vote that such meeting must be called at an earlier date, in which case the Board shall make public announcement of the time, place, subject matter of such meeting and whether it is open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the Board will publish it in the **Federal Register**.

#### **§ 507.6 Procedures for closing meetings.**

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the Board votes to take such action. A separate vote of the Board members shall be taken with respect to each Board meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 507.4, or with respect to any information which is proposed to be withheld under § 507.4. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular

matters and is scheduled to be held not more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interest may be directly affected by a portion of the meeting requests that the Board close such a portion to the public for any of the reasons referred to in § 507.4 (e), (f) or (g), the Board, upon request of any of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Board shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Board shall announce the time, place and subject matter of the meeting at least eight (8) days before the meeting.

(d) For every closed meeting, the Board's Legal Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board.

#### **§ 507.7 Reconsideration of opening or closing a meeting.**

The time or place of a Board meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Board members determines by a recorded vote that Board business so requires and that no earlier announcement of the change was possible, and the Board publicly announces such change and the vote of each member upon such change at the earliest practicable time.

#### **§ 507.8 Recording keeping of closed meetings.**

(a) The Board shall maintain an electronic recording of the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The Board, after review by the Chairman, shall make promptly

available to the public in a place easily accessible to the public, a complete transcript or electronic record of the discussion of any item on the agenda, or any item of testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the Board determines to contain information which may be withheld under § 507.4. Copies of such record, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication. The Board shall maintain a complete transcript or electronic copy of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

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## **LIBRARY OF CONGRESS**

### **Copyright Office**

#### **37 CFR Part 201**

[Docket No. RM 2000-3C]

#### **Public Performance of Sound Recordings: Definition of a Service**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Request for comment.

**SUMMARY:** The Copyright Office of the Library of Congress is providing an opportunity to all interested persons to file comments to a motion requesting a stay of its final rule which clarifies that transmissions of a broadcast signal over a digital communications network are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act.

**DATES:** Oppositions are due no later than Tuesday, September 24, 2002. Replies are due no later than Friday, September 27, 2002.

**ADDRESSES:** An original and five copies should be hand delivered to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20540.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone:

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

**SUPPLEMENTARY INFORMATION:** On December 11, 2000, the Copyright Office issued a final rule to clarify that the transmission of a sound recording as part of a retransmission of an AM/FM broadcast signal over a digital communications network, such as the Internet, is subject to the limited digital performance right provided by section 106(6) of the Copyright Act, title 17 of the United States Code, and is not exempt under section 114(d)(1)(A)—the provision that specifically exempts a “nonsubscription broadcast transmission.” 65 FR 77292 (December 11, 2000).

Broadcasters have challenged the Copyright Office’s final rule and its interpretation of the relevant statutory provisions. On January 25, 2001, Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters (hereinafter, “Broadcasters”) filed suit in the United States District Court for the Eastern District of Pennsylvania, seeking a declaratory ruling that the Office’s rule was invalid. On cross summary judgment motions, the district court upheld the Copyright Office’s interpretation of the statutory exemption, finding the interpretation both reasonable and permissible. *Bonneville Int’l, et al. v. Peters*, 153 F. Supp. 2d 763 (E.D. Pa. 2001). An appeal of the district court’s decision is currently pending in the Third Circuit. See *Bonneville, et al. v. Peters*, Case No. 01-3720 (3d Cir.).

Under the Office’s interpretation of the section 114(d)(1)(A) exemption, FCC-licensed broadcasters who retransmit their AM/FM programming over the Internet may publicly perform the sound recordings that are part of that programming under the section 114 statutory license provided that the licensee pays the appropriate copyright royalty fees and abides by the terms of the statutory license. The rates and terms for use of this license and for the statutory license for making ephemeral phonorecords for the purpose of facilitating digital transmissions were recently adopted by the Library of Congress. See Final Order and Rule, Docket No. 2000-9 CARP DTRA1&2, 67 FR 45239 (July 8, 2002). Under these rules, the first payment of copyright royalty fees for those operating under the section 112 and section 114 statutory licenses is due October 20, 2002.

Broadcasters, however, would like to stay the application of the Copyright Office’s interpretation of section 114(d)(1)(A). To this end, Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Salem Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters (hereinafter, “Movants”) filed a motion for stay<sup>1</sup> with the Copyright Office on September 11, 2002, asking “the Register of Copyrights to stay the Register’s December 11, 2000 final rule, 65 FR 77330 (December 11, 2000), to the extent that its application would otherwise require thousands of radio stations across the nation to pay retrospective royalties covering a four year period on October 20, 2002 and thereafter to make royalty payments on a monthly basis for broadcasting transmissions that Broadcasters contend are exempt from any such obligation pursuant to 17 U.S.C. 114(d)(1)(A).”

Because this rule was promulgated through a notice and comment proceeding in accordance with the Administrative Procedure Act, title 5 of the United States Code, Chapter 5, Subchapter II and Chapter 7, the Copyright Office is publishing this notice to announce the receipt of the motion to stay the December 11, 2000, final rule and to provide any person with an interest in this proceeding with an opportunity to comment on the motion.

Oppositions are due in the Copyright Office no later than close of business on Tuesday, September 24, 2002. Replies are due no later than Friday, September 27, 2002.

Dated: September 13, 2002.

**David O. Carson,**

*General Counsel.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[ME-68-7017b; FRL-7378-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Maine; Redesignation of the Portland, Maine Moderate Ozone Nonattainment Area to Attainment, Determination of Attainment and Approval of the Associated Maintenance Plan; or Determination of Nonattainment as of November 15, 1997 and Reclassification of the Portland, Maine Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing in the alternative either to redesignate the Portland, Maine moderate ozone nonattainment area (the Portland Area) to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS), or to determine that the Portland Area did not attain by November 15, 1997, and thus must be reclassified to serious. The Portland Area is comprised of three counties in Maine; Cumberland, Sagadahoc, and York. EPA is proposing to determine that the Portland Area has attained the NAAQS. This determination is based on three years of complete quality-assured ambient air monitoring data for the 1999-2001 ozone seasons. The EPA is also proposing to approve the maintenance plan, submitted by the Maine Department of Environmental Protection as a revision to the Maine State Implementation Plan (SIP). Approval of the maintenance plan would put into place a plan for maintaining the 1-hour ozone standard for the next 10 years in the Portland Area. EPA is also proposing to approve Maine’s 1999 attainment inventory for the Portland Area into the Maine State Implementation Plan. This inventory establishes a 1999 ozone emission inventory of volatile organic compounds and oxides of nitrogen for the Portland nonattainment area in Maine.

In the alternative, EPA is proposing to find that the Portland Area did not attain the 1-hour ozone NAAQS by November 15, 1997, the date set forth in the Clean Air Act (CAA) for moderate nonattainment areas that have received a 1-year attainment date extension under section 181(a)(5) of the CAA. If EPA finalizes this finding, the CAA provides that the Portland Area would be reclassified, at least to a serious nonattainment area. EPA is also taking

<sup>1</sup> A copy of the motion to stay has been posted to the Copyright Office website at: <http://www.loc.gov/copyright/carp/motiontostay.pdf>. Alternatively, copies of the motion are available in the Office of the General Counsel for copying.