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Copyright
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Panels

P.O. Box 70977
Southwest
Station
Washington
D.C. 20024

Telephone:
(202)707-8380

Facsimile:
(202)252-3423

In the Matter of

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2002-1 CARP DTRA3

Docket No. 2001-2 CARP DTNSRA

PROCEDURAL ORDER

This Order addresses four matters in the above-captioned proceeding. First, the Order announces the consolidation of the above-captioned proceedings. Second, the Order sets forth a new precontroversy discovery schedule for parties in this proceeding and announces the date of a meeting to discuss administrative issues. Third, the Order directs each party in this proceeding to file a Notice of Intention to Submit a Written Direct Case. Fourth, the Order sets a new briefing schedule for filing oppositions and replies to the pending motion to adopt the interim protective order.

Proceeding to Set Rates and Terms for New Subscription Services

On May 20, 2003, the Office published a notice announcing proposed regulations to set rates and terms for the use of sound recordings by means of eligible nonsubscription transmissions and transmissions made by new subscription services. 68 FR 27506 (May 20, 2003). However, the Office had never formally consolidated the proceeding to set rates and terms for new subscription services, Docket No. 2001-2 CARP DTNSRA, with the proceeding to set rates and terms for eligible nonsubscription transmissions, Docket No. 2002-1 CARP DTRA3. Instead, it had dismissed without prejudice a motion to consolidate these two proceedings based upon a finding that adoption of the proposed regulations would render the motion moot. Order, Docket No. 2002-1 CARP DTRA3 (dated April 10, 2003).

Because many of the parties participating in each of these proceedings are the same and have already addressed the issues in these proceedings in their earlier negotiations, the Office is reconsidering the question of consolidation *sua sponte*. As a general observation, the Office notes that most parties had expressed no opposition to the original motion to consolidate and those who had, Collegiate Broadcasters, Inc., Intercollegiate Broadcasting System, Inc., and Harvard Radio Broadcasting Co., have subsequently withdrawn from the proceeding to set rates and terms for eligible nonsubscription transmissions of sound recordings. Moreover, the proposed rates and certain of the proposed terms applicable to both dockets are being adopted under section 251.63(b). Because the remaining terms apply equally to the parties in both proceedings, consolidation of the proceedings to consider these disputed issues before a single CARP promotes efficiencies for both the Office and the parties.

Wherefore, **IT IS ORDERED** that Docket Nos. 2002-1 CARP DTRA3 and 2001-2 CARP DTNSRA are consolidated into a single proceeding.

Initial Meeting and New Precontroversy Discovery Schedule

The Office is announcing the precontroversy discovery schedule for this proceeding the purpose of which is to resolve the dispute over the contested terms in the proposed agreement published on May 20 that concern the selection and responsibilities of the Designated Agent(s), to make any necessary conforming changes to the uncontested terms of payment set forth in that agreement, and, if necessary, to establish rates and terms applicable to noncommercial licensees.

On July 3, 2003, RIAA, the American Council on Education, and the Intercollegiate Broadcasting System, Inc., jointly with Harvard Radio Broadcasting Co., Inc. filed a petition for adjustment of rates and terms for statutory licenses applicable to certain noncommercial entities. This agreement will be published in the near future in the **Federal Register** pursuant to 37 C.F.R. § 251.63(b). If any person or entity with a significant interest in those rates and terms files an objection and a notice of intent to participate in this CARP proceeding, that party and all other parties with an interest in rates and terms applicable to noncommercial entities must adhere to the following precontroversy schedule and be prepared to file their direct cases on October 6, 2003.

The Office is also announcing the date for a meeting, prior to the submission of direct cases, to discuss administrative issues. This meeting will be held on **Thursday, September 25, 2003**, at **2 p.m.** in Room LM-414 of the James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20554.

Wherefore, **IT IS ORDERED** that the precontroversy discovery schedule for this proceeding is as follows:

ACTION	DATE
Filing of Written Direct Cases	October 6, 2003
Requests for Underlying Documents Related to Written Direct Cases	October 16, 2003
Responses to Requests for Underlying Documents	October 21, 2003
Completion of Document Production	October 28, 2003
Follow-up Requests for Underlying Documents	October 31, 2003
Responses to Follow-up Requests	November 5, 2003
Motions Related to Document Production	November 10, 2003
Production of Documents in Response to Follow-up Requests	November 13, 2003
All Other Motions, Petitions and Objections	November 19, 2003

Notice of Intention to File Written Direct Cases

The Office recognizes that a number of parties to this proceeding have already withdrawn their Notices of Intent to Participate, and it anticipates that additional parties will withdraw before the deadline for submitting written direct cases. Thus, to avoid burdening the active participants in this proceeding from serving written direct cases on those parties that are not, or will not, be active, the Library is requiring all parties that filed a Notice of Intent to Participate and that intend to file

written direct cases to submit a Notice of Intention to Submit a Written Direct Case **no later than September 22, 2003.**

A Notice of Intention to Submit a Written Direct Case shall state the party's intention to file a written direct case on October 6, 2003, and to be an active participant in this proceeding. In addition, the notice shall provide the name, address, telephone number, and facsimile number of one person (counsel, or if not represented by counsel, the party) on whom copies of filings and submissions should be served. The names and addresses so provided shall comprise the service list for the remainder of the proceeding.

Any party that fails to file such a notice shall forfeit the right to receive service copies of the written direct cases from the parties on October 6, 2003. Failure to submit a Notice, however, does not result in automatic dismissal from this proceeding. A party who fails to file this notice but who, in fact, files a written direct case on October 6, 2003, will be added to the service list. These parties must then be served with copies of the other parties' direct cases by Friday, October 10, 2003. All parties must then adhere to the discovery schedule set forth in this Order.

Protective Order

On April 29, 2003, the Library set a schedule for the filing of any oppositions and replies to the April 25, 2003, motion of the Copyright Owners and Performers requesting the adoption of a protective order. The April 29 Order also adopted an interim Protective Order pending disposition of the motion. The Office received oppositions to the motion from Collegiate Broadcasters, Inc. and the National Religious Broadcasters Music License Committee. However, the date for filing replies was vacated by order dated May 20, 2003, in order to allow the Copyright Owners and Performers to conclude their settlement negotiations with noncommercial entities. Consequently, the motion to adopt the Protective Order submitted April 25, 2003, has never been fully briefed.

Thus, the Library is reopening its consideration of the Copyright Owners and Performers' motion for Protective Order at this time so that it can conclude its consideration of the merits of the parties' concerns with respect to the proposed Protective Order and enter a final Protective Order.

Wherefore, **IT IS ORDERED** that any further oppositions to the proposed Protective Order be filed with the Copyright Office no later than September 4, 2003, and replies be filed no later than September 11, 2003.

SO ORDERED.

Marybeth Peters
Register of Copyrights

BY: Tanya M. Sandros
Tanya M. Sandros
Senior Attorney

DATED: August 18, 2003