

Buitenlandse wet- en regelgeving

Behorende bij

RECHTSVERGELIJKING VAN AUTEURSRECHT-GESCHILLENBESLECHTINGSMECHANISMEN

Prof. mr D.W.F. Verkade, mr D.J.G. Visser en A.C.M. Alkema met medewerking van prof. mr W.D.H. Asser

Projectnummer WODC: 01.082

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Duitsland

Urheberrechtswahrnehmungsgesetz

Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten

Vom 9. September 1965(BGBl. I, S. 1294) - 8. Mai 1998 (BGBl. I, S. 902)

Erster Abschnitt Erlaubnis zum Geschäftsbetrieb

§ 1 Erlaubnispflicht

(1) Wer Nutzungsrechte, Einwilligungsrechte oder Vergütungsansprüche, die sich aus dem Urheberrechtsgesetz vom 9. September 1965 (Bundesgesetzbl. I S. 1273) ergeben, für Rechnung mehrerer Urheber oder Inhaber verwandter Schutzrechte zur gemeinsamen Auswertung wahrnimmt, bedarf dazu der Erlaubnis, gleichviel, ob die Wahrnehmung in eigenem oder fremdem Namen erfolgt.

(2) Absatz 1 ist auf die gelegentliche oder kurzfristige Wahrnehmung der bezeichneten Rechte und Ansprüche nicht anzuwenden.

(3) Wer ohne die nach Absatz 1 erforderliche Erlaubnis tätig wird, kann die ihm zur Wahrnehmung anvertrauten Rechte oder Ansprüche nicht geltend machen. Ihm steht das Antragsrecht nach § 109 des Urheberrechtsgesetzes nicht zu.

(4) Übt eine juristische Person oder eine Personengemeinschaft die in Absatz 1 bezeichnete Tätigkeit aus, so ist sie Verwertungsgesellschaft im Sinne dieses Gesetzes. Übt eine einzelne natürliche Person die in Absatz 1 bezeichnete Tätigkeit aus, so sind auf sie die in diesem Gesetz für Verwertungsgesellschaften getroffenen Bestimmungen sinngemäß anzuwenden.

§ 2 Erteilung der Erlaubnis

Die Erlaubnis wird auf schriftlichen Antrag von der Aufsichtsbehörde (§ 18 Abs. 1) erteilt. Dem Antrag sind beizufügen:

- 1.. die Satzung der Verwertungsgesellschaft,
- 2.. Angaben über Namen, Anschrift und Staatsangehörigkeit der nach Gesetz oder Satzung zur Vertretung der Verwertungsgesellschaft berechtigten Personen,
- 3.. eine Erklärung über die Zahl der Personen, welche die Verwertungsgesellschaft mit der Wahrnehmung ihrer Nutzungsrechte, Einwilligungsrechte oder Vergütungsansprüche beauftragt haben, sowie über Zahl und wirtschaftliche Bedeutung der der Verwertungsgesellschaft zur Wahrnehmung anvertrauten Rechte und Ansprüche.

§ 3 Versagung der Erlaubnis

(1) Die Erlaubnis darf nur versagt werden, wenn

1.. die Satzung der Verwertungsgesellschaft nicht den Vorschriften dieses Gesetzes entspricht,

2.. Tatsachen die Annahme rechtfertigen, daß eine nach Gesetz oder Satzung zur Vertretung der Verwertungsgesellschaft berechnigte Person die für die Ausübung ihrer Tätigkeit erforderliche Zuverlässigkeit nicht besitzt, oder

3.. die wirtschaftliche Grundlage der Verwertungsgesellschaft eine wirksame Wahrnehmung der ihr anvertrauten Rechte oder Ansprüche nicht erwarten läßt.

(2) Die Versagung der Erlaubnis ist zu begründen und der Verwertungsgesellschaft zuzustellen.

§ 4 Widerruf der Erlaubnis

(1) Die Erlaubnis ist zu widerrufen, wenn

1.. einer der Versagungsgründe des § 3 Abs. 1 bei Erteilung der Erlaubnis der Aufsichtsbehörde nicht bekannt war oder nachträglich eingetreten ist und dem Mangel nicht innerhalb einer von der Aufsichtsbehörde zu setzenden Frist abgeholfen wird oder

2.. die Verwertungsgesellschaft einer der ihr nach diesem Gesetz obliegenden Verpflichtungen trotz Abmahnung durch die Aufsichtsbehörde wiederholt zuwiderhandelt.

(2) Der Widerruf der Erlaubnis ist zu begründen und der Verwertungsgesellschaft zuzustellen. Der Widerruf wird drei Monate, nachdem er unanfechtbar geworden ist, wirksam, wenn darin kein späterer Zeitpunkt festgesetzt ist.

§ 5 Bekanntmachung

Die Erteilung der Erlaubnis und ein nach § 4 Abs. 2 wirksam gewordener Widerruf sind im Bundesanzeiger bekanntzumachen.

Zweiter Abschnitt Rechte und Pflichten der Verwertungsgesellschaft

§ 6 Wahrnehmungszwang

(1) Die Verwertungsgesellschaft ist verpflichtet, die zu ihrem Tätigkeitsbereich gehörenden Rechte und Ansprüche auf Verlangen der Berechnigten zu angemessenen Bedingungen wahrzunehmen, wenn diese Deutsche im Sinne des Grundgesetzes oder Staatsangehörige eines anderen Mitgliedstaates der Europäischen Union oder eines anderen Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum sind oder ihren Wohnsitz im Geltungsbereich dieses Gesetzes haben und eine wirksame Wahrnehmung der Rechte oder Ansprüche anders nicht möglich ist. Ist der Inhaber eines Unternehmens Berechnigter, so gilt die Verpflichtung gegenüber dem Unternehmen mit Sitz in einem Mitgliedstaat der Europäischen Union oder in einem Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum.

(2) Zur angemessenen Wahrung der Belange der Berechnigten, die nicht als Mitglieder der Verwertungsgesellschaft aufgenommen werden, ist eine gemeinsame Vertretung zu bilden. Die Satzung der Verwertungsgesellschaft muß Bestimmungen über die Wahl der Vertretung durch die Berechnigten sowie über die Befugnisse der Vertretung enthalten.

§ 7 Verteilung der Einnahmen

Die Verwertungsgesellschaft hat die Einnahmen aus ihrer Tätigkeit nach festen Regeln (Verteilungsplan) aufzuteilen, die ein willkürliches Vorgehen bei der Verteilung ausschließen. Der Verteilungsplan soll dem Grundsatz entsprechen, daß kulturell bedeutende Werke und Leistungen zu fördern sind. Die Grundsätze des Verteilungsplans sind in die Satzung der Verwertungsgesellschaft aufzunehmen.

§ 8 Vorsorge- und Unterstützungseinrichtungen

Die Verwertungsgesellschaft soll Vorsorge- und Unterstützungseinrichtungen für die Inhaber der von ihr wahrgenommenen Rechte oder Ansprüche einrichten.

§ 9 Rechnungslegung und Prüfung

(1) Die Verwertungsgesellschaft hat unverzüglich nach dem Schluß des Geschäftsjahres für das vergangene Geschäftsjahr die Jahresbilanz, die Gewinn- und Verlustrechnung und den Anhang (Jahresabschluß) sowie einen Lagebericht aufzustellen.

(2) Der Jahresabschluß ist klar und übersichtlich aufzustellen. Er hat den Grundsätzen ordnungsmäßiger Buchführung zu entsprechen. Die Jahresbilanz sowie die Gewinn- und Verlustrechnung sind im Anhang zu erläutern.

(3) Im Lagebericht sind der Geschäftsverlauf und die Lage der Verwertungsgesellschaft so darzulegen, daß ein den tatsächlichen Verhältnissen entsprechendes Bild vermittelt wird.

(4) Der Jahresabschluß ist unter Einbeziehung der Buchführung und des Lageberichts durch einen oder mehrere sachverständige Prüfer (Abschlußprüfer) zu prüfen. Abschlußprüfer können nur Wirtschaftsprüfer oder Wirtschaftsprüfungsgesellschaften sein.

(5) Die Abschlußprüfer haben über das Ergebnis ihrer Prüfung schriftlich zu berichten. Sind nach dem abschließenden Ergebnis ihrer Prüfung keine Einwendungen zu erheben, so haben sie dies durch den folgenden Vermerk zum Jahresabschluß zu bestätigen:

Die Buchführung, der Jahresabschluß und der Lagebericht entsprechen nach meiner (unserer) pflichtmäßigen Prüfung Gesetz und Satzung.

Sind Einwendungen zu erheben, so haben die Abschlußprüfer die Bestätigung einzuschränken oder zu versagen. Die Abschlußprüfer haben den Bestätigungsvermerk mit Angabe von Ort und Tag zu unterzeichnen.

(6) Die Verwertungsgesellschaft hat den Jahresabschluß und den Lagebericht spätestens acht Monate nach dem Schluß des Geschäftsjahres im Bundesanzeiger zu veröffentlichen. Dabei ist der volle Wortlaut des Bestätigungsvermerks wiederzugeben. Haben die Abschlußprüfer die Bestätigung versagt, so ist hierauf in einem besonderen Vermerk zum Jahresabschluß hinzuweisen.

(7) Weitergehende gesetzliche Vorschriften über die Rechnungslegung und Prüfung bleiben unberührt.

§ 10 Auskunftspflicht

Die Verwertungsgesellschaft ist verpflichtet, jedermann auf schriftliches Verlangen Auskunft darüber zu geben, ob sie Nutzungsrechte an einem bestimmten Werk oder bestimmte Einwilligungsrechte oder Vergütungsansprüche für einen Urheber oder Inhaber eines verwandten Schutzrechts wahrnimmt.

§ 11 Abschlußzwang

(1) Die Verwertungsgesellschaft ist verpflichtet, auf Grund der von ihr wahrgenommenen Rechte jedermann auf Verlangen zu angemessenen Bedingungen Nutzungsrechte einzuräumen oder Einwilligungen zu erteilen.

(2) Kommt eine Einigung über die Höhe der Vergütung für die Einräumung der Nutzungsrechte oder Erteilung der Einwilligungen nicht zustande, so gelten die Nutzungsrechte als eingeräumt oder die Einwilligungen als erteilt, wenn die von der Verwertungsgesellschaft geforderte Vergütung unter Vorbehalt an die Verwertungsgesellschaft gezahlt oder zu ihren Gunsten hinterlegt worden ist.

§ 12 Gesamtverträge

Die Verwertungsgesellschaft ist verpflichtet, mit Vereinigungen, deren Mitglieder nach dem Urheberrechtsgesetz geschützte Werke oder Leistungen nutzen oder zur Zahlung von Vergütungen nach dem Urheberrechtsgesetz verpflichtet sind, über die von ihr wahrgenommenen Rechte und Ansprüche Gesamtverträge zu angemessenen Bedingungen abzuschließen, es sei denn, daß der Verwertungsgesellschaft der Abschluß eines Gesamtvertrages nicht zuzumuten ist, insbesondere weil die Vereinigung eine zu geringe Mitgliederzahl hat.

§ 13 Tarife

(1) Die Verwertungsgesellschaft hat Tarife aufzustellen über die Vergütung, die sie auf Grund der von ihr wahrgenommenen Rechte und Ansprüche fordert. Soweit Gesamtverträge abgeschlossen sind, gelten die in diesen Verträgen vereinbarten Vergütungssätze als Tarife.

(2) Die Verwertungsgesellschaft ist verpflichtet, die Tarife und jede Tarifänderung unverzüglich im Bundesanzeiger zu veröffentlichen.

(3) Berechnungsgrundlage für die Tarife sollen in der Regel die geldwerten Vorteile sein, die durch die Verwertung erzielt werden. Die Tarife können sich auch auf andere Berechnungsgrundlagen stützen, wenn diese ausreichende, mit einem wirtschaftlich vertretbaren Aufwand zu erfassende Anhaltspunkte für die durch die Verwertung erzielten Vorteile ergeben. Bei der Tarifgestaltung ist auf den Anteil der Werknutzung am Gesamtumfang des Verwertungsvorganges angemessen Rücksicht zu nehmen. Die Verwertungsgesellschaft soll bei der Tarifgestaltung und bei der Einziehung der tariflichen Vergütung auf religiöse, kulturelle und soziale Belange der zur Zahlung der Vergütung Verpflichteten einschließlich der Belange der Jugendpflege angemessene Rücksicht nehmen.

§ 13a Pflichten des Veranstalters

(1) Veranstalter von öffentlichen Wiedergaben urheberrechtlich geschützter Werke haben vor der Veranstaltung die Einwilligung der Verwertungsgesellschaft einzuholen, welche die Nutzungsrechte an diesen Werken wahrnimmt.

(2) Nach der Veranstaltung hat der Veranstalter der Verwertungsgesellschaft eine Aufstellung über die bei der Veranstaltung benutzten Werke zu übersenden. Dies gilt nicht für die Wiedergabe eines Werkes mittels Tonträger, für Wiedergaben von Funksendungen eines Werkes und für Veranstaltungen, auf denen in der Regel nicht geschützte oder nur unwesentlich bearbeitete Werke der Musik aufgeführt werden.

(3) Soweit für die Verteilung von Einnahmen aus der Wahrnehmung von Rechten zur Wiedergabe von Funksendungen Auskünfte der Sendeunternehmen erforderlich sind, die die Funksendungen veranstaltet haben, sind diese Sendeunternehmen verpflichtet, der Verwertungsgesellschaft die Auskünfte gegen Erstattung der Unkosten zu erteilen.

§ 13b Vermutung der Sachbefugnis; Außenseiter bei Kabelweitersendung

(1) Macht die Verwertungsgesellschaft einen Auskunftsanspruch geltend, der nur durch eine Verwertungsgesellschaft geltend gemacht werden kann, so wird vermutet, daß sie die Rechte aller Berechtigten wahrnimmt.

(2) Macht die Verwertungsgesellschaft einen Vergütungsanspruch nach §§ 27, 54 Abs. 1, § 54a Abs. 1 oder 2, § 75 Abs. 3, § 85 Abs. 3 oder § 94 Abs. 4 des Urheberrechtsgesetzes geltend, so wird vermutet, daß sie die Rechte aller Berechtigten wahrnimmt. Sind mehr als eine Verwertungsgesellschaft zur Geltendmachung des Anspruchs berechtigt, so gilt die Vermutung nur, wenn der Anspruch von allen berechtigten Verwertungsgesellschaften gemeinsam geltend gemacht wird. Soweit die Verwertungsgesellschaft Zahlungen auch für die Berechtigten erhält, deren Rechte sie nicht wahrnimmt, hat sie den zur Zahlung Verpflichteten von den Vergütungsansprüchen dieser Berechtigten freizustellen.

(3) Hat ein Rechtsinhaber die Wahrnehmung seines Rechts der Kabelweitersendung im Sinne des § 20b Abs. 1 Satz 1 des Urheberrechtsgesetzes keiner Verwertungsgesellschaft übertragen, so gilt die Verwertungsgesellschaft, die Rechte dieser Art wahrnimmt, als berechtigt, seine Rechte wahrzunehmen. Kommen dafür mehrere Verwertungsgesellschaften in Betracht, so gelten sie gemeinsam als berechtigt; wählt der Rechtsinhaber eine von ihnen aus, so gilt nur diese als berechtigt. Die Sätze 1 und 2 gelten nicht für Rechte, die das Sendeunternehmen innehat, dessen Sendung weitergesendet wird.

(4) Hat die Verwertungsgesellschaft, die nach Absatz 3 als berechtigt gilt, eine Vereinbarung über die Kabelweitersendung getroffen, so hat der Rechtsinhaber im Verhältnis zu dieser Verwertungsgesellschaft die gleichen Rechte und Pflichten, wie wenn er ihr seine Rechte zur Wahrnehmung übertragen hätte. Seine Ansprüche verjähren in drei Jahren von dem Zeitpunkt an, in dem die Verwertungsgesellschaft satzungsgemäß die Abrechnung der Kabelweitersendung vorzunehmen hat; die Verwertungsgesellschaft kann ihm eine Verkürzung durch Meldefristen oder auf ähnliche Weise nicht entgegenhalten.

§ 14 Schiedsstelle

(1) Die Schiedsstelle kann von jedem Beteiligten angerufen werden bei Streitfällen,

1.. an denen eine Verwertungsgesellschaft beteiligt ist, wenn sie

a) die Nutzung von Werken oder Leistungen, die nach dem Urheberrechtsgesetz geschützt sind, oder

b) den Abschluß oder die Änderung eines Gesamtvertrages

betreffen,

2.. an denen ein Sendeunternehmen und ein Kabelunternehmen beteiligt sind, wenn sie die Verpflichtung zum Abschluß eines Vertrages über die Kabelweitersendung betreffen.

(2) Die Schiedsstelle wird bei der Aufsichtsbehörde (§ 18 Abs. 1) gebildet. Sie besteht aus dem Vorsitzenden oder seinem Vertreter und zwei Beisitzern. Die Mitglieder der Schiedsstelle müssen die Befähigung zum Richteramt nach dem Deutschen Richterrecht haben. Sie werden vom Bundesminister der Justiz auf vier Jahre berufen; Wiederberufung ist zulässig.

(3) Die Mitglieder der Schiedsstelle sind nicht an Weisungen gebunden.

(4) Die Schiedsstelle wird durch schriftlichen Antrag angerufen.

(5) Die Schiedsstelle hat auf eine gütliche Beilegung des Streitfalles hinzuwirken. Aus einem vor der Schiedsstelle geschlossenen Vergleich findet die Zwangsvollstreckung statt, wenn er unter Angabe des Tages seines Zustandekommens von dem Vorsitzenden und den Parteien unterschrieben ist; § 797a der Zivilprozeßordnung gilt entsprechend.

(6) Ein Schiedsvertrag über künftige Streitfälle nach Absatz 1 Nr. 1 Buchstabe b ist nichtig, wenn er nicht jedem Beteiligten das Recht einräumt, im Einzelfall statt des Schiedsgerichts die Schiedsstelle anzurufen und eine Entscheidung durch die ordentlichen Gerichte zu verlangen.

(7) Durch die Anrufung der Schiedsstelle wird die Verjährung in gleicher Weise wie durch Klageerhebung unterbrochen. Die Unterbrechung dauert bis zur Beendigung des Verfahrens vor der Schiedsstelle fort. § 211 Abs. 2 des Bürgerlichen Gesetzbuchs gilt entsprechend. Wird die Anrufung der Schiedsstelle zurückgenommen, so gilt die Verjährung als nicht unterbrochen.

§ 14a Einigungsvorschläge der Schiedsstelle

(1) Die Schiedsstelle faßt ihre Beschlüsse mit Stimmenmehrheit. § 196 Abs. 2 des Gerichtsverfassungsgesetzes ist anzuwenden.

(2) Die Schiedsstelle hat den Beteiligten einen Einigungsvorschlag zu machen. Der Einigungsvorschlag ist zu begründen und von sämtlichen Mitgliedern der Schiedsstelle zu unterschreiben. Auf die Möglichkeit des Widerspruchs und auf die Folgen bei Versäumung der Widerspruchsfrist ist in dem Einigungsvorschlag hinzuweisen. Der Einigungsvorschlag ist den Parteien zuzustellen.

(3) Der Einigungsvorschlag gilt als angenommen und eine dem Inhalt des Vorschlags entsprechende Vereinbarung als zustande gekommen, wenn nicht innerhalb eines Monats nach Zustellung des Vorschlags ein schriftlicher Widerspruch bei der Schiedsstelle eingeht. Betrifft der Streitfall die Einräumung oder Übertragung von Nutzungsrechten der Kabelweitersendung, beträgt die Frist drei Monate.

(4) Aus dem angenommenen Einigungsvorschlag findet die Zwangsvollstreckung statt; § 797a der Zivilprozeßordnung gilt entsprechend.

§ 14b Beschränkung des Einigungsvorschlags; Absehen vom Einigungsvorschlag

(1) Ist bei Streitfällen nach § 14 Abs. 1 Nr. 1 Buchstabe a die Anwendbarkeit oder die Angemessenheit eines Tarifs (§ 13) bestritten und ist der Sachverhalt auch im übrigen streitig, so kann sich die Schiedsstelle in ihrem Einigungsvorschlag auf eine Stellungnahme zur Anwendbarkeit oder Angemessenheit des Tarifs beschränken.

(2) Sind bei Streitfällen nach § 14 Abs. 1 Nr. 1 Buchstabe a die Anwendbarkeit und die Angemessenheit eines Tarifs nicht im Streit, so kann die Schiedsstelle von einem Einigungsvorschlag absehen.

§ 14c Streitfälle über Gesamtverträge

(1) Bei Streitfällen nach § 14 Abs. 1 Nr. 1 Buchstabe b enthält der Einigungsvorschlag den Inhalt des Gesamtvertrages. Die Schiedsstelle kann einen Gesamtvertrag nur mit Wirkung vom 1. Januar des Jahres vorschlagen, in dem der Antrag gestellt wird.

(2) Auf Antrag eines Beteiligten kann die Schiedsstelle einen Vorschlag für eine einstweilige Regelung machen. § 14a Abs. 2 Satz 2 bis 4 und Abs. 3 ist anzuwenden. Die einstweilige Regelung gilt, wenn nichts anderes vereinbart wird, bis zum Abschluß des Verfahrens vor der Schiedsstelle.

(3) Die Schiedsstelle hat das Bundeskartellamt über das Verfahren zu unterrichten. Die Bestimmungen in § 90 Abs. 1 Satz 2 und Abs. 2 des Gesetzes gegen Wettbewerbsbeschränkungen sind mit der Maßgabe entsprechend anzuwenden, daß der Präsident des Bundeskartellamts keinen Angehörigen der Aufsichtsbehörde (§ 18 Abs. 1) zum Vertreter bestellen kann.

§ 14d Streitfälle über Rechte der Kabelerweiterung

Bei Streitfällen nach § 14 Abs. 1 Nr. 2 gilt § 14c entsprechend.

§ 15 Verfahren vor der Schiedsstelle

Der Bundesminister der Justiz wird ermächtigt, durch Rechtsverordnung

- 1.. das Verfahren vor der Schiedsstelle zu regeln,
- 2.. die näheren Vorschriften über die Entschädigung der Mitglieder der Schiedsstelle für ihre Tätigkeit zu erlassen,
- 3.. die für das Verfahren vor der Schiedsstelle von der Aufsichtsbehörde zur Deckung der Verwaltungskosten zu erhebenden Kosten (Gebühren und Auslagen) zu bestimmen; die Gebühren dürfen nicht höher sein als die im Prozeßverfahren erster Instanz zu erhebenden Gebühren,
- 4.. Bestimmungen über den Kostenschuldner, die Fälligkeit und die Verjährung von Kosten, die Kostenvorschußpflicht, Kostenbefreiungen, das Kostenfestsetzungsverfahren und die Rechtsbehelfe gegen die Kostenfestsetzung zu treffen.

§ 16 Gerichtliche Geltendmachung

(1) Bei Streitfällen nach § 14 Abs. 1 können Ansprüche im Wege der Klage erst geltend gemacht werden, nachdem ein Verfahren vor der Schiedsstelle vorausgegangen ist.

(2) Dies gilt nicht, wenn bei Streitfällen nach § 14 Abs. 1 Nr. 1 Buchstabe a die Anwendbarkeit und die Angemessenheit des Tarifs nicht bestritten sind. Stellt sich erst im Laufe des Rechtsstreits heraus, daß die Anwendbarkeit oder die Angemessenheit des Tarifs im Streit ist, setzt das Gericht den Rechtsstreit aus, um den Parteien die Anrufung der Schiedsstelle zu ermöglichen. Weist die Partei, die die Anwendbarkeit oder die Angemessenheit des Tarifs bestreitet, nicht innerhalb von zwei Monaten nach Aussetzung nach, daß ein Antrag bei der Schiedsstelle gestellt ist, so wird der Rechtsstreit fortgesetzt; in diesem Fall gilt die Anwendbarkeit und die Angemessenheit des von der Verwertungsgesellschaft dem Nutzungsverhältnis zugrunde gelegten Tarifs als zugestanden.

(3) Der vorherigen Anrufung der Schiedsstelle bedarf es ferner nicht für Anträge auf Anordnung eines Arrestes oder einer einstweiligen Verfügung. Nach Erlaß eines Arrestes oder einer einstweiligen Verfügung ist die Klage ohne die Beschränkung des Absatzes 1 zulässig, wenn der Partei nach den §§ 926, 936 der Zivilprozeßordnung eine Frist zur Erhebung der Klage bestimmt worden ist.

(4) Über Ansprüche auf Abschluß eines Gesamtvertrages (§ 12) und eines Vertrages nach § 14 Abs. 1 Nr. 2 entscheidet ausschließlich das für den Sitz der Schiedsstelle zuständige Oberlandesgericht im ersten Rechtszug. Für das Verfahren gilt der Erste Abschnitt des Zweiten Buchs der Zivilprozeßordnung entsprechend. Das Oberlandesgericht setzt den Inhalt der Gesamtverträge, insbesondere Art und Höhe der Vergütung, nach billigem Ermessen fest. Die Festsetzung ersetzt die entsprechende Vereinbarung der Beteiligten. Die Festsetzung eines Vertrages ist nur mit Wirkung vom 1. Januar des Jahres an möglich, in dem der Antrag gestellt wird. Gegen die von dem Oberlandesgericht erlassenen Endurteile findet die Revision nach Maßgabe der Zivilprozeßordnung statt.

§ 17 Ausschließlicher Gerichtsstand

(1) Für Rechtsstreitigkeiten über Ansprüche einer Verwertungsgesellschaft wegen Verletzung eines von ihr wahrgenommenen Nutzungsrechts oder Einwilligungsrechts ist das Gericht ausschließlich zuständig, in dessen Bezirk die Verletzungshandlung vorgenommen worden ist oder der Verletzer seinen allgemeinen Gerichtsstand hat. § 105 des Urheberrechtsgesetzes bleibt unberührt.

(2) Sind nach Absatz 1 Satz 1 für mehrere Rechtsstreitigkeiten gegen denselben Verletzer verschiedene Gerichte zuständig, so kann die Verwertungsgesellschaft alle Ansprüche bei einem dieser Gerichte geltend machen.

Dritter Abschnitt Aufsicht über die Verwertungsgesellschaft

§ 18 Aufsichtsbehörde

(1) Aufsichtsbehörde ist das Patentamt.

(2) Soweit auf Grund anderer gesetzlicher Vorschriften eine Aufsicht über die Verwertungsgesellschaft ausgeübt wird, ist sie im Benehmen mit dem Patentamt auszuüben.

(3) Über Anträge auf Erteilung der Erlaubnis zum Geschäftsbetrieb (§ 2) und über den Widerruf der Erlaubnis (§ 4) entscheidet das Patentamt im Einvernehmen mit dem Bundeskartellamt. Gelingt

es nicht, das Einvernehmen herzustellen, so legt das Patentamt die Sache dem Bundesminister der Justiz vor; dessen Weisungen, die ins Benehmen mit dem Bundesminister für Wirtschaft erteilt werden, ersetzen das Einvernehmen.

§ 19 Inhalt der Aufsicht

(1) Die Aufsichtsbehörde hat darauf zu achten, daß die Verwertungsgesellschaft den ihr nach diesem Gesetz obliegenden Verpflichtungen ordnungsgemäß nachkommt.

(2) Die Aufsichtsbehörde kann von der Verwertungsgesellschaft jederzeit Auskunft über alle die Geschäftsführung betreffenden Angelegenheiten sowie Vorlage der Geschäftsbücher und anderen geschäftlichen Unterlagen verlangen.

(3) Die Aufsichtsbehörde ist berechtigt, an der Mitgliederversammlung und, wenn ein Aufsichtsrat oder Beirat besteht, auch an dessen Sitzungen durch einen Beauftragten teilzunehmen.

(4) Rechtfertigen Tatsachen die Annahme, daß ein nach Gesetz oder Satzung zur Vertretung der Verwertungsgesellschaft Berechtigter die für die Ausübung seiner Tätigkeit erforderliche Zuverlässigkeit nicht besitzt, so setzt die Aufsichtsbehörde der Verwertungsgesellschaft zur Vermeidung des Widerrufs der Erlaubnis nach § 4 Abs. 1 Nr. 1 eine Frist zu seiner Abberufung. Die Aufsichtsbehörde kann ihm bis zum Ablauf dieser Frist die weitere Ausübung seiner Tätigkeit untersagen, wenn dies zur Abwendung schwerer Nachteile erforderlich ist.

§ 20 Unterrichtungspflicht

Die Verwertungsgesellschaft hat der Aufsichtsbehörde jeden Wechsel der nach Gesetz oder Satzung zu ihrer Vertretung berechtigten Personen anzuzeigen. Sie hat der Aufsichtsbehörde unverzüglich abschriftlich zu übermitteln

- 1.. jede Satzungsänderung,
- 2.. die Tarife und jede Tarifänderung,
- 3.. die Gesamtverträge,
- 4.. die Vereinbarungen mit ausländischen Verwertungsgesellschaften,
- 5.. die Beschlüsse der Mitgliederversammlung, eines Aufsichtsrats oder Beirats und aller Ausschüsse,
- 6.. den Jahresabschluß, den Geschäftsbericht und den Prüfungsbericht,
- 7.. die Entscheidungen in gerichtlichen oder behördlichen Verfahren, in denen sie Partei ist, soweit die Aufsichtsbehörde dies verlangt.

§ 20a (aufgehoben)

Vierter Abschnitt Übergangs- und Schlußbestimmungen

§ 21 Zwangsgeld

Auf die Vollstreckung von Verwaltungsakten, die auf Grund dieses Gesetzes erlassen werden, findet das Verwaltungs-Vollstreckungsgesetz vom 27. April 1953 (Bundesgesetzbl. I S. 157) mit der Maßgabe Anwendung, daß die Höhe des Zwangsgeldes bis zehntausend Deutsche Mark betragen kann.

§ 22 (außer Kraft)

§ 23 Bestehende Verwertungsgesellschaften

(1) Bei Inkrafttreten dieses Gesetzes bestehende Verwertungsgesellschaften dürfen ihre Tätigkeit im bisherigen Umfang bis zum Ablauf eines Jahres nach Inkrafttreten dieses Gesetzes ohne die nach diesem Gesetz erforderliche Erlaubnis (§ 1) fortsetzen.

(2) Die Aufsichtsbehörde kann eine solche Verwertungsgesellschaft auf Antrag für die Zeit bis zum Ablauf eines Jahres nach Inkrafttreten dieses Gesetzes von einzelnen ihr nach diesem Gesetz obliegenden Verpflichtungen befreien.

(3) Die Aufsichtsbehörde kann für eine Verwertungsgesellschaft auf Antrag die in den Absätzen 1 und 2 genannten Fristen einmal oder mehrmals angemessen verlängern, längstens jedoch bis zum 31. Dezember 1969.

§ 24 Änderung des Gesetzes gegen Wettbewerbsbeschränkungen

(hier nicht aufgeführt; überholt durch Neufassung des GWB ab 1.1.1999)

§ 25 Änderung der Bundesgebührenordnung für Rechtsanwälte

(hier nicht aufgeführt)

§ 26 Aufgehobene Vorschriften

Mit Inkrafttreten dieses Gesetzes werden folgende Vorschriften aufgehoben, soweit sie nicht bereits außer Kraft getreten sind:

1.. das Gesetz über Vermittlung von Musikaufführungsrechten vom 4. Juli 1933 (Reichsgesetzbl. I S. 452);

2.. die Verordnung zur Durchführung des Gesetzes über die Vermittlung von Musikaufführungsrechten vom 15. Februar 1934 (Reichsgesetzbl. I S. 100).

§ 26a Anhängige Verfahren

Die §§ 14 bis 16 sind auf Verfahren, die bei Inkrafttreten dieses Gesetzes vor der Schiedsstelle anhängig sind, nicht anzuwenden; für diese Verfahren gelten die §§ 14 und 15 des Gesetzes über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten in der Fassung vom 9. September 1965 (BGBl. I S. 1294).

§ 27 Geltung im Land Berlin

Dieses Gesetz gilt nach Maßgabe des § 13 Abs. 1 des Dritten Überleitungsgesetzes vom 4. Januar 1952 (Bundesgesetzbl. I S. 1) auch im Land Berlin. Rechtsverordnungen, die auf Grund dieses Gesetzes erlassen werden, gelten im Land Berlin nach § 14 des Dritten Überleitungsgesetzes.

§ 28 Inkrafttreten

(1) § 14 Abs. 7 tritt am Tage nach der Verkündung dieses Gesetzes in Kraft.

(2) Im übrigen tritt dieses Gesetz am 1. Januar 1966 in Kraft.

Urheberrechtsschiedsstellenverordnung

§ 1

- (1) Der schriftliche Antrag zur Anrufung der Schiedsstelle nach § 14 Abs. 4 des Urheberrechtswahrnehmungsgesetzes hat Namen und Anschrift des Antragsgegners sowie eine Darstellung des Sachverhalts zu enthalten. Er soll in zwei Stücken eingereicht werden.
- (2) Der Antrag wird von der Schiedsstelle dem Antragsgegner mit der Aufforderung zugestellt, sich innerhalb eines Monats schriftlich zu äußern.
- (3) Beantragt eine Verwertungsgesellschaft den Abschluß eines Gesamtvertrages, so kann der Antragsgegner erklären, daß er zum Abschluß des Vertrages nicht bereit sei. Gibt er die Erklärung ab, so ist das Verfahren einzustellen, das Verfahren ist auch einzustellen, wenn er sich innerhalb eines Monats nicht erklärt. Der Antragsgegner ist hierüber zu belehren.

§ 2

- (1) Der Antrag kann zurückgenommen werden, in Verfahren mit mündlicher Verhandlung jedoch ohne Einwilligung des Antragsgegners nur bis zum Beginn der mündlichen Verhandlung.
- (2) Wird der Antrag zurückgenommen, so hat der Antragsteller die Kosten des Verfahrens und die notwendigen Auslagen des Antragsgegners zu tragen.

§ 3

Bei Streitfällen, die den Abschluß oder die Änderung eines Gesamtvertrages betreffen, entscheidet die Schiedsstelle auf Grund mündlicher Verhandlung. Von der mündlichen Verhandlung kann mit Einverständnis der Beteiligten abgesehen werden.

§ 4

Bei Streitfällen nach § 14 Abs. 1 Nr. 1 des Urheberrechtswahrnehmungsgesetzes entscheidet die Schiedsstelle im schriftlichen Verfahren. Die Schiedsstelle entscheidet auf Grund mündlicher Verhandlung, wenn einer der Beteiligten es beantragt und der andere zustimmt oder wenn sie es ausnahmsweise zur Aufklärung des Sachverhaltes für erforderlich hält.

§ 5

Bei Streitfällen, die den Abschluß oder die Änderung eines Gesamtvertrages betreffen, kann der Vorsitzende die Beteiligten mit ihrem Einverständnis vor der mündlichen Verhandlung zu einem Vergleichsversuch ohne Zuziehung der Beisitzer laden. Er ist dazu verpflichtet, wenn beide Beteiligten es beantragen.

§ 6

- (1) Zu der Verhandlung sind die Beteiligten zu laden. Die Ladungsfrist beträgt mindestens zwei Wochen.
- (2) Die Verhandlung vor der Schiedsstelle ist nicht öffentlich. Beauftragte des Bundesministers der Justiz, der Aufsichtsbehörde und des Bundeskartellamts dürfen anwesend sein.

(3) Für die Zurückweisung von Bevollmächtigten oder Beiständen der Beteiligten oder die Untersagung des Vortrags ist § 157 der Zivilprozeßordnung entsprechend anzuwenden; einer Erlaubnis zum mündlichen Verhandeln vor der Schiedsstelle bedarf es nicht.

(4) Über die Verhandlung ist eine Niederschrift zu fertigen, die vom Vorsitzenden und vom Schriftführer zu unterzeichnen ist.

(5) Der Einigungsvorschlag braucht den Beteiligten nicht mündlich verkündet zu werden.

§ 7

(1) Erscheint der Antragsteller nicht zur mündlichen Verhandlung, so gilt der Antrag als zurückgenommen. Er kann jedoch Wiedereinsetzung in den vorigen Stand beantragen; die Vorschriften der Zivilprozeßordnung über die Wiedereinsetzung in den vorigen Stand sind entsprechend anzuwenden.

(2) Erscheint der Antragsgegner nicht zur mündlichen Verhandlung, so kann die Schiedsstelle nach Lage der Akten entscheiden.

(3) Unentschuldigt ausgebliebene Beteiligte haben die durch ihr Ausbleiben verursachten Kosten zu tragen.

(4) Die Beteiligten sind in der Ladung zur mündlichen Verhandlung auf die Folgen ihres Ausbleibens hinzuweisen.

§ 8

(1) Die Schiedsstelle ist an Beweisanträge nicht gebunden. Sie ermittelt von Amts wegen und erhebt die erforderlichen und geeignet erscheinenden Beweise. Den Beteiligten ist Gelegenheit zu geben, sich zu den Ermittlungs- und Beweisergebnissen zu äußern.

(2) Die Schiedsstelle kann vorbehaltlich des Absatzes 3 Beteiligte und Zeugen vernehmen, Gutachten erstatten lassen sowie Nutzervereinigungen und Verwertungsgesellschaften, die nicht Beteiligte des Verfahrens sind, anhören.

(3) Die Vernehmung eines Zeugen, der nicht freiwillig vor der Schiedsstelle erscheint oder die Aussage verweigert, die Einholung eines Gutachtens von einem Sachverständigen, der nicht freiwillig vor der Schiedsstelle erscheint oder die Erstattung eines Gutachtens verweigert, sowie eine von der Schiedsstelle für erforderlich erachtete Beeidigung eines Zeugen, eines Sachverständigen oder eines Beteiligten sind auf Ersuchen der Schiedsstelle von dem Amtsgericht vorzunehmen, in dessen Bezirk die Schiedsstelle ihren Sitz hat.

(4) Die Vorschriften des Gerichtsverfassungsgesetzes, insbesondere über die Rechtshilfe, und die Vorschriften der Zivilprozeßordnung sind entsprechend anzuwenden.

§ 9

Über die Ausschließung und Ablehnung von Mitgliedern der Schiedsstelle entscheidet das Amtsgericht, in dessen Bezirk die Schiedsstelle ihren Sitz hat. Das Ablehnungsgesuch ist bei der Schiedsstelle anzubringen. Die Vorschriften der Zivilprozeßordnung sind entsprechend anzuwenden.

§ 10

Im übrigen verfährt die Schiedsstelle nach billigem Ermessen. Sie soll sich dabei an die Vorschriften der Zivilprozeßordnung anlehnen.

§ 11

- (1) Wird die Schiedsstelle mit ehrenamtlichen Mitgliedern besetzt, so erhalten sie auf Antrag eine Entschädigung nach Maßgabe der §§ 2 bis 5 und 9 bis 11 des Gesetzes über die Entschädigung der ehrenamtlichen Richter.
- (2) Die Entschädigung wird von der Aufsichtsbehörde festgesetzt.
- (3) Das ehrenamtliche Mitglied kann die gerichtliche Festsetzung beantragen. Über den Antrag entscheidet das Amtsgericht, in dessen Bezirk die Schiedsstelle ihren Sitz hat. Der Antrag ist bei der Aufsichtsbehörde einzureichen oder zu Protokoll der Geschäftsstelle zu erklären. Die Aufsichtsbehörde kann dem Antrag abhelfen. Kosten werden nicht erstattet.

§ 12

- (1) Zeugen und Sachverständige erhalten eine Entschädigung nach Maßgabe der §§ 2 bis 6, 8 bis 12 und 14 des Gesetzes über die Entschädigung von Zeugen und Sachverständigen; § 7 Abs. 1, Abs. 2 Satz 1 bis 3 und § 15 dieses Gesetzes sind entsprechend anzuwenden.
- (2) § 11 Abs. 2 und 3 ist entsprechend anzuwenden.
- (3) Die Festsetzung wirkt nicht zu Lasten des Kostenschuldners.

§ 13

- (1) Für das Verfahren vor der Schiedsstelle werden von der Aufsichtsbehörde eine Gebühr und Auslagen (Kosten) erhoben.
- (2) Die Gebühr richtet sich nach dem Streitwert. Ihre Höhe bestimmt sich nach der Tabelle der Anlage 2 zum Gerichtskostengesetz. Für den Mindestbetrag der Gebühr gilt § 11 Abs. 3 des Gerichtskostengesetzes entsprechend.
- (3) Der Streitwert wird von der Schiedsstelle festgesetzt. Er bemißt sich nach den Vorschriften, die für das Verfahren vor den ordentlichen Gerichten nach der Zivilprozeßordnung gelten.
- (4) In Verfahren nach § 3 Satz 1 entfällt die Gebühr, wenn vor einer mündlichen Verhandlung der Antrag zurückgenommen oder das Verfahren eingestellt wird. Wird der Antrag vor einer Beweiserhebung zurückgenommen, ermäßigt sich die Gebühr auf ein Drittel. In Verfahren nach § 3 Satz 2 und § 4 kann die Schiedsstelle die Gebühr bei Rücknahme des Antrags oder bei Einstellung nach billigem Ermessen entfallen lassen oder herabsetzen.
- (5) Auslagen werden in entsprechender Anwendung der Nummern 9000 bis 9013 des Kostenverzeichnisses zum Gerichtskostengesetz erhoben.
- (6) Die Gebühr wird mit der Beendigung des Verfahrens, Auslagen werden sofort nach ihrer Entstehung fällig.
- (7) Die Zustellung des Antrags soll von der Zahlung eines Vorschusses in Höhe eines Drittels der Gebühr durch den Antragsteller abhängig gemacht werden. Im Falle des § 1 Abs. 3 soll der Vorschuß erst angefordert werden, wenn die Fortsetzung des Verfahrens feststeht.
- (8) Die Vorschriften des § 2 Abs. 1, 2 und 4 sowie der §§ 7, 8, 10, 49, 54, 56, 58, 59 und 68 des Gerichtskostengesetzes über die Kostenfreiheit, die Nachforderung, die Nichterhebung und die Verjährung der Kosten, den Kostenschuldner und den Auslagenvorschuß sind entsprechend anzuwenden.
- (9) Über Einwendungen gegen Verwaltungsakte beim Vollzug der Kostenvorschriften entscheidet in Verfahren, die den Abschluß oder die Änderung eines Gesamtvertrages betreffen, das Oberlandesgericht, sonst das Amtsgericht, in dessen Bezirk die Aufsichtsbehörde ihren Sitz hat. Die Einwendungen sind bei der Schiedsstelle oder der Aufsichtsbehörde zu erheben. § 4 Abs. 3 und § 5 Abs. 3 Satz 1 erster Halbsatz, Abs. 4 Satz 2 und 3, Abs. 5 und 6 des Gerichtskostengesetzes sind entsprechend anzuwenden.

§ 14

(1) Die Schiedsstelle entscheidet über die Verteilung der Kosten des Verfahrens nach billigem Ermessen, soweit nichts anderes bestimmt ist. Die Schiedsstelle kann anordnen, daß die einem Beteiligten erwachsenen notwendigen Auslagen ganz oder teilweise von der Gegenseite zu erstatten sind, wenn dies der Billigkeit entspricht.

(2) Die Entscheidung über die Kosten kann durch Antrag auf gerichtliche Entscheidung angefochten werden, auch wenn der Einigungsvorschlag der Schiedsstelle angenommen wird. Über den Antrag entscheidet in Verfahren, die den Abschluß oder die Änderung eines Gesamtvertrages betreffen, das Oberlandesgericht, sonst das Amtsgericht, in dessen Bezirk die Schiedsstelle ihren Sitz hat.

§ 15

(1) Die Kosten des Verfahrens (§ 13) und die einem Beteiligten zu erstattenden notwendigen Auslagen (§ 14 Abs. 1 Satz 2) werden von der Aufsichtsbehörde festgesetzt. Die Festsetzung ist dem Kostenschuldner und, wenn nach § 14 Abs. 1 Satz 2 zu erstattende notwendige Auslagen festgesetzt worden sind, auch dem Erstattungsberechtigten zuzustellen.

(2) Jeder Betroffene kann innerhalb einer Frist von zwei Wochen nach der Zustellung die gerichtliche Festsetzung der Kosten und der zu erstattenden notwendigen Auslagen beantragen. Bei Verfahren, die den Abschluß oder die Änderung eines Gesamtvertrages betreffen, entscheidet über den Antrag das Oberlandesgericht, in dessen Bezirk die Aufsichtsbehörde ihren Sitz hat, in allen anderen Fällen das Amtsgericht. Der Antrag ist bei der Aufsichtsbehörde einzureichen. Die Aufsichtsbehörde kann dem Antrag abhelfen.

(3) Aus dem Kostenfestsetzungsbeschluß findet die Zwangsvollstreckung in entsprechender Anwendung der Zivilprozeßordnung statt.

§ 16

(gegenstandslos)

§ 17

Diese Verordnung tritt am 1. Januar 1986 in Kraft. Gleichzeitig tritt die Verordnung über die Schiedsstelle nach dem Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten vom 18. Dezember 1965 (BGBl. I S. 2106), geändert durch Verordnung vom 26. Juni 1970 (BGBl. I S. 840), außer Kraft; sie ist jedoch weiter anzuwenden in Verfahren, die vor dem 1. Januar 1986 anhängig geworden sind.

Der Bundesminister der Justiz.

Verenigd Koninkrijk

CDPA 1998 Chapter VII Copyright Licensing

Licensing schemes and licensing bodies

Section 116: Licensing schemes and licensing bodies.

116.—(1) In this Part a "licensing scheme" means a scheme setting out—

(a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences, and

(b) the terms on which licences would be granted in those classes of case;

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Chapter a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) In this section "copyright licences" means licences to do, or authorise the doing of, any of the acts restricted by copyright.

(4) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—

(a) a single collective work or collective works of which the authors are the same, or

(b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For this purpose a group of companies means a holding company and its subsidiaries, within the meaning of section 736 of the Companies Act 1985. (1985 c. 6)

Section 117: Licensing schemes to which following sections apply

117. Sections 118 to 123 (references and applications with respect to licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for--

(a) copying the work,

(b) rental or lending of copies of the work to the public,

(c) performing, showing or playing the work in public, or

(d) broadcasting the work or including it in a cable programme service;

and references in those sections to a licensing scheme shall be construed accordingly.

Section 118: Reference of proposed licensing scheme to tribunal.

118.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Section 119: Reference of licensing scheme to tribunal.

119.—(1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—

- (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
- (b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Section 120: Further reference of scheme to tribunal.

120.—(1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 118 or 119, or under this section, made an order with respect to the scheme, then, while the order remains in force—

- (a) the operator of the scheme,
- (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
- (c) an organisation claiming to be representative of such persons,

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—

- (a) within twelve months from the date of the order on the previous reference, or
- (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Section 121: Application for grant of licence in connection with licensing scheme.

121.—(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—

- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
- (b) proposes terms for a licence which are unreasonable,

may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if—

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Section 122: Application for review of order as to entitlement to licence.

122.—(1) Where the Copyright Tribunal has made an order under section 121 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal—

(a) within twelve months from the date of the order, or of the decision on a previous application under this section, or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Section 123: Effect of order of tribunal as to licensing scheme.

123.—(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

(a) under section 118 (reference of terms of proposed scheme), or

(b) under section 119 or 120 (reference of existing scheme to Tribunal),

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies—

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made—

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(b) the reference in subsection (2) (a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where subsection (4) below applies.

(4) An order of the Tribunal under section 119 or 120 made with respect to a scheme which is certified for any purpose under section 143 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

(5) Where the Tribunal has made an order under section 121 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he—

(a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

Section 124: Licences to which following sections apply

124. Sections 125 to 128 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise--

(a) copying the work,

(b) rental or lending of copies of the work to the public,

(c) performing, showing or playing the work in public, or

(d) broadcasting the work or including it in a cable programme service;

and references in those sections to a licence shall be construed accordingly.

Section 125: Reference to tribunal of proposed licence.

125.—(1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Section 126: Reference to tribunal of expiring licence.

126.—(1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Section 127: Application for review of order as to licence.

127.—(1) Where the Copyright Tribunal has made an order under section 125 or 126, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal—

(a) within twelve months from the date of the order or of the decision on a previous application under this section, or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

Section 128: Effect of order of tribunal as to licence.

128.—(1) Where the Copyright Tribunal has made an order under section 125 or 126 and the order remains in force, the person entitled to the benefit of the order shall if he—

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order may be assigned—

(a) in the case of an order under section 125, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under section 126, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under section 125 or 126, or an order under section 127 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire. If such a direction is made—

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(b) the reference in subsection (1) (a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Factors to be taken into account in certain classes of case

Section 129: General considerations: unreasonable discrimination.

129. In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to—

(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and

(b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

Section 130: Licences for reprographic copying.

130. Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Tribunal shall have regard to—

(a) the extent to which published editions of the works in question are otherwise available,

(b) the proportion of the work to be copied, and

(c) the nature of the use to which the copies are likely to be put.

Section 131: Licences for educational establishments in respect of works included in broadcasts or cable programmes.

131.—(1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) The Copyright Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

Section 132: Licences to reflect conditions imposed by promoters of events.

132.—(1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

(2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Tribunal to have regard to any such conditions in so far as they—

- (a) purport to regulate the charges to be imposed in respect of the grant of licences, or
- (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

Section 133: Licences to reflect payments in respect of underlying rights.

133.—(1) In considering what charges should be paid for a licence--

- (a) on a reference or application under this Chapter relating to licences for the rental or lending of copies of a work, or
- (b) on an application under section 142 (royalty or other sum payable for lending of certain works),

the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Copyright Tribunal shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

Section 134: Licences in respect of works included in retransmissions.

134.—(1) Subject to subsection (3A) this section applies to references or applications under this Chapter relating to licences to include in a broadcast or cable programme service—

- (a) literary, dramatic, musical or artistic works, or,
- (b) sound recordings or films,

where one broadcast or cable programme ("the first transmission") is, by reception and immediate re-transmission, to be further broadcast or included in a cable programme service ("the further transmission").

(2) So far as the further transmission is to the same area as the first transmission, the Copyright Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission was made, the Tribunal shall (except where subsection (4) applies) leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.

(3A) This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).

Section 135: Mention of specific matters not to exclude other relevant considerations.

135. The mention in sections 129 to 134 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations.

Use as of right of sound recordings in broadcasts and cable programme services

Section 135A: Circumstances in which right available

135A.—(1) Section 135C applies to the inclusion in a broadcast or cable programme service of any sound recordings if--

- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so,
- (b) the condition in subsection (2) or (3) applies, and
- (c) the person including those recordings in the broadcast or cable programme service has complied with section 135B.

(2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence--

- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and
- (b) allowing unlimited needletime or such needletime as he has demanded.

(3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).

(4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In the group of sections from this section to section 135G--

"needletime" means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;

"sound recording" does not include a film sound track when accompanying a film.

(6) In sections 135B to 135G, "terms of payment" means terms as to payment for including sound recordings in a broadcast or cable programme service.

Section 135B: Notice of intention to exercise right

135B.—(1) A person intending to avail himself of the right conferred by section 135C must--

- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
- (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).

- (3) Before the person intending to avail himself of the right begins to exercise it, he must--
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
 - (b) apply to the Tribunal under section 135D to settle the terms of payment.

Section 135C: Conditions for exercise of right

135C.—(1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who--

- (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings,
- (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require, and
- (c) makes the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.

(2) Payments are to be made at not less than quarterly intervals in arrears.

(3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made--

- (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
- (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).

(4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

Section 135D: Applications to settle payments

135D.—(1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

Section 135E: References etc. about conditions, information and other terms

135E.—(1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal--

- (a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or
- (b) any question whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

Section 135F: Application for review of order

135F.—(1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.

(2) An application shall not be made, except with the special leave of the Tribunal--

- (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Section 135G: Factors to be taken into account

135G.—(1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall--

(a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and

(b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.

(3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.

Section 135H: Power to amend sections 135A to 135G

135H.—(1) The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend sections 135A to 135G so as--

(a) to include in any reference to sound recordings any works of a description specified in the order; or

(b) to exclude from any reference to a broadcast or cable programme service any broadcast or cable programme service of a description so specified.

(2) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

Section 136: Implied indemnity in schemes or licences or reprographic copying Implied indemnity in certain schemes and licences for reprographic copying.

136.—(1) This section applies to—

(a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, and

(b) licences granted by licensing bodies for such copying,

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied—

(a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and

(b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

(3) The circumstances of a case are within the apparent scope of a licence if—

(a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and

(b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) In this section "liability" includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.

(5) A scheme or licence to which this section applies may contain reasonable provision—

- (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made;
- (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

Section 137: Reprographic copying by educational establishments Power to extend coverage of scheme or licence.

137.—(1) This section applies to—

- (a) a licensing scheme to which sections 118 to 123 apply (see section 117) and which is operated by a licensing body, or
- (b) a licence to which sections 125 to 128 apply (see section 124),

so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.

(2) If it appears to the Secretary of State with respect to a scheme or licence to which this section applies that—

- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and
- (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

he may by order provide that the scheme or licence shall extend to those works.

(3) Where he proposes to make such an order, the Secretary of State shall give notice of the proposal to—

- (a) the copyright owners,
- (b) the licensing body in question, and
- (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Secretary of State thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.

(5) In considering whether to make an order the Secretary of State shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

Section 138: Variation or discharge of order extending scheme or licence.

138.—(1) The owner of the copyright in a work in respect of which an order is in force under section 137 may apply to the Secretary of State for the variation or discharge of the order, stating his reasons for making the application.

(2) The Secretary of State shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.

(3) On considering the reasons for the application the Secretary of State may confirm the order forthwith; if he does not do so, he shall give notice of the application to—

- (a) the licensing body in question, and

(b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the application within the period of two months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.

(5) In considering the application the Secretary of State shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

(6) The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

Section 139: Appeals against orders.

139.—(1) The owner of the copyright in a work which is the subject of an order section 137 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

(2) Where the Secretary of State has made an order under section 138 (order confirming, varying or discharging order extending coverage of scheme or licence) —

(a) the person who applied for the order, or

(b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,

may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made.

(3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Tribunal may allow.

(4) An order under section 137 or 138 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.

(5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

Section 140: Inquiry whether new scheme or general licence required.

140.—(1) The Secretary of State may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of—

(a) published literary, dramatic, musical or artistic works, or

(b) the typographical arrangement of published editions, of a description which appears to the Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 137 (power to extend existing schemes and licences to similar works).

(2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Secretary of State.

(3) The regulations shall, in particular, provide for notice to be given to—

(a) persons or organisations appearing to the Secretary of State to represent the owners of copyright in works of that description, and

(b) persons or organisations appearing to the Secretary of State to represent educational establishments, and for the making of written or oral representations by such persons; but

without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

(4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied—

(a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and

(b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.

(6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section (and section 141) a "general licence" means a licence granted by a licensing body which covers all works of the description to which it applies.

Section 141: Statutory licence where recommendation not implemented.

141.—(1) The Secretary of State may, within one year of the making of a recommendation under section 140 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.

(2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if—

(a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or

(b) a general licence has been—

(i) granted to or for the benefit of that establishment, or

(ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 125 (reference of terms of proposed licence), or

(iii) offered to or for the benefit of that establishment and refused without such a reference, and the terms of the scheme or licence accord with the recommendation.

(3) The order shall also provide that any existing licence authorising the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.

(4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit.

(5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

In this subsection "dealt with" means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) The order shall not come into force until at least six months after it is made.

(7) An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.

(8) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section a "certified licensing scheme" means a licensing scheme certified for the purposes of this section under section 143.

Royalty or other sum payable for lending of certain works

Section 142: Royalty or other sum payable for lending of certain works

142.—(1) An application to settle the royalty or other sum payable in pursuance of section 66 (lending of copies of certain copyright works) may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Section 143: Certification of licensing schemes Certification of licensing schemes.

143.—(1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of—

(a) section 35 (educational recording of broadcasts or cable programmes),

(b) section 60 (abstracts of scientific or technical articles),

(c) section 66 (lending to public of copies of certain works),

(d) section 74 (sub-titled copies of broadcasts or cable programmes for people who are deaf or hard of hearing), or

(e) section 141 (reprographic copying of published works by educational establishments).

(2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it—

(a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and

(b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of section 35, 60, 66, 74 or 141, as the case may be—

(a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or

(b) if the scheme is the subject of a reference under section 118 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 118, 119 or 120, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

Powers exercisable in consequence of competition report

Section 144: Powers exercisable in consequence of report of Competition Commission.

144.—(1) Where the matters specified in a report of the Competition Commission as being those which in the Commission's opinion operate, may be expected to operate or have operated against the public interest include—

- (a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences, or
- (b) a refusal of a copyright owner to grant licences on reasonable terms,
- the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973 (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.
- (2) The references in sections 56(2) and 73(2) of that Act, and section 10(2) (b) 12(5) of the Competition Act 1980, to the powers specified in that Part of that Schedule shall be construed accordingly.
- (3) A Minister shall only exercise the powers available by virtue of this section if he is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom is a party.
- (4) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.
- (5) Where the terms of a licence are settled by the Tribunal, the license has effect from the date on which the application to the Tribunal was made.

Compulsory collective administration of certain rights

Section 144A: Collective exercise of certain rights in relation to cable re-transmission

144A.—(1) This section applies to the right of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorisation for cable re-transmission of a broadcast from another EEA member state in which the work is included. That right is referred to below as "cable re-transmission right".

(2) Cable re-transmission right may be exercised against a cable operator only through a licensing body

(3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right.

Where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

(4) A copyright owner to whom subsection (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.

(5) Any rights to which a copyright owner may be entitled by virtue of subsection (4) must be claimed within the period of three years beginning with the date of the cable re-transmission concerned.

(6) This section does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.

(7) In this section--

"cable operator" means a person providing a cable programme service; and

"cable re-transmission" means the reception and immediate re-transmission by way of a cable programme service of a broadcast.

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The Tribunal

Section 145: The Copyright Tribunal.

145.—(1) The Tribunal established under section 23 of the Copyright Act 1956 is renamed the Copyright Tribunal.

(2) The Tribunal shall consist of a chairman and two deputy chairmen appointed by the Lord Chancellor, after consultation with the Lord Advocate, and not less than two or more than eight ordinary members appointed by the Secretary of State.

(3) A person is not eligible for appointment as chairman or deputy chairman unless

- (a) he has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) he is an advocate or solicitor in Scotland of at least 7 years' standing;
- (c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing; or
- (d) he has held judicial office.

NOTE: The Secretary of State's functions under sections 145 and 150 of the Copyright, Designs and Patents Act 1988 (functions of being consulted by the Lord Chancellor on appointments of chairman and deputy chairman of the Copyright Tribunal and on rules for regulating proceedings before that Tribunal) are to be treated, for the purposes of section 63 of the 1998 Act, as being exercisable in or as regards Scotland.

Section 146: Membership of the Tribunal.

146.—(1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(2) A member of the Tribunal may resign his office by notice in writing to the Secretary of State or, in the case of the chairman or a deputy chairman, to the Lord Chancellor.

(3) The Secretary of State or, in the case of the chairman or a deputy chairman, the Lord Chancellor may by notice in writing to the member concerned remove him from office if—

- (a) he has become bankrupt or made an arrangement with his creditors or, in Scotland, his estate has been sequestrated or he has executed a trust deed for his creditors or entered into a composition contract, or
- (b) he is incapacitated by physical or mental illness,

or if he is in the opinion of the Secretary of State or, as the case may be, the Lord Chancellor otherwise unable or unfit to perform his duties as member.

(3A) A person who is the chairman or a deputy chairman of the Tribunal shall vacate his office on the day on which he attains the age of 70 years; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75 years).

(4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.

(5) The appointment shall be made—

- (a) in the case of the chairman or deputy chairman, by the Lord Chancellor, who shall appoint a person who would be eligible for appointment to that office, and
- (b) in the case of an ordinary member, by the Secretary of State;

and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

(6) The Lord Chancellor shall consult the Lord Advocate before exercising his powers under this section.

Section 147: Financial provisions.

147.—(1) There shall be paid to the members of the Copyright Tribunal such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary of State with the approval of the Treasury may determine.

(2) The Secretary of State may appoint such staff for the Tribunal as, with the approval of the Treasury as to numbers and remuneration, he may determine.

(3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary of State with the approval of the Treasury may determine shall be paid out of money provided by Parliament.

Section 148: Constitution for purposes of proceedings.

148.—(1) For the purposes of any proceedings the Copyright Tribunal shall consist of—

- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal, and
- (b) two or more ordinary members.

(2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.

(3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.

(4) If the chairman is unable to continue, the chairman of the Tribunal shall—

- (a) appoint one of the remaining members to act as chairman, and
- (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.

(5) A person is "suitably qualified" for the purposes of subsection (4) (b) if he is, or is eligible for appointment as, a deputy chairman of the Tribunal.

Jurisdiction and procedure

Section 149: Jurisdiction of the Tribunal.

149. The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (za) section 73 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including work);
- (zb) section 93C (application to determine amount of equitable remuneration under section 93B);
- (a) section 118, 119, or 120 (reference of licensing scheme);
- (b) section 121 or 122 (application with respect to entitlement to licence under licensing scheme);
- (c) section 125, 126 or 127 (reference or application with respect to licensing by licensing body);
- (cc) section 135D or 135E (application or references with respect to use as of right of sound recordings in broadcasts or cable programme services);
- (d) section 139 (appeal against order as to coverage of licensing scheme or licence);
- (e) section 142 (application to settle royalty or other sum payable for lending of certain works);
- (f) section 144(4) (application to settle terms of copyright licence available as of right).

Section 150: General power to make rules.

150.—(1) The Lord Chancellor may, after consultation with the Lord Advocate, make rules for regulating proceedings before the Copyright Tribunal and, subject to the approval of the Treasury, as to the fees chargeable in respect of such proceedings.

(2) The rules may apply in relation to the Tribunal, as respects proceedings in England and Wales or Northern Ireland, any of the provisions of Part I the Arbitration Act 1996.

(3) Provision shall be made by the rules—

(a) prohibiting the Tribunal from entertaining a reference under section 118, 119 or 120 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;

(b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and

(c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under section 152 (appeal to the court on point of law).

(5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTE: The Secretary of State's functions under sections 145 and 150 of the Copyright, Designs and Patents Act 1988 (functions of being consulted by the Lord Chancellor on appointments of chairman and deputy chairman of the Copyright Tribunal and on rules for regulating proceedings before that Tribunal) are to be treated, for the purposes of section 63 of the 1998 Act, as being exercisable in or as regards Scotland.

Section 151: Costs, proof of orders, &c.

151.—(1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.

(2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

(3) As respect proceedings in Scotland, the Tribunal has the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath, as an arbiter under a submission.

Section 151A: Award of interest

151A.—(1) Any of the following, namely--

(a) a direction under section 123(3) so far as relating to a licence for broadcasting a work or including a work in a cable programme service;

(b) a direction under section 128(3) so far as so relating;

(c) an order under section 135D(1); and

(d) an order under section 135F confirming or varying an order under section 135D(1),

may award simple interest at such rate and for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.

(2) In this section "the relevant date" means--

(a) in relation to a direction under section 123(3), the date on which the reference was made;

(b) in relation to a direction under section 128(3), the date on which the reference or application was made;

(c) in relation to an order under section 135D(1), the date on which the first payment under section 135C(2) became due; and

(d) in relation to an order under section 135F, the date on which the application was made.

Section 152: Appeals Appeal to the court on point of law.

152.—(1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the High Court or, in the case of proceedings of the Tribunal in Scotland, to the Court of Session.

(2) Provision shall be made by rules under section 150 limiting the time within which an appeal may be brought.

(3) Provision may be made by rules under that section—

(a) for suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;

(b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Act as to the effect of the order;

(c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

The Copyright Tribunal Rules (as amended)

Statutory Instrument 1989 No. 1129, 1991 No. 201, 1992 No. 467

The Lord Chancellor in exercise of the powers conferred upon him by sections 150 and 152(2) and (3) of, and paragraph 34 of Schedule 1 to, the Copyright, Designs and Patents Act 1988, after consultation with the Lord Advocate, with the approval of the Treasury as to the fees chargeable under these Rules in respect of proceedings before the Copyright Tribunal, and after consultation with the Council on Tribunals in accordance with section 10(1) of the Tribunals and Inquiries Act 1971, hereby makes the following Rules:-

Preliminary

Citation and commencement

1. These Rules may be cited as the Copyright Tribunal Rules 1989 and shall come into force on 1st August 1989.

Interpretation

2.-(1) In these Rules, unless the context otherwise requires-

"the Act" means the Copyright, Designs and Patents Act 1988;

"the 1990 Act" means the Broadcasting Act 1990;

"applicant" means a person or organisation who has made a reference or application to the Tribunal;

"the Chairman" means the Chairman of the Tribunal or a deputy chairman or any other member of the Tribunal appointed to act as chairman;

"costs", in relation to proceedings in Scotland, means "expenses";

"credentials" means-

(a) the validity of an organisation's claim to be representative of a class of persons, or

(b) the possession by an intervener of a substantial interest in the matter in dispute;

"intervener" means a person or organisation who has applied rule 7, 23, 26, 26D, 30, 33, 37, 41, 41 D or 44 to be made a party to proceedings;

"the office" means the office for the time being of the Tribunal;

"proceedings" means proceedings in respect of a reference or an application before the Tribunal;

"programme service" has the meaning given to it by section 201 of the 1990 Act;"

"the Secretary" means the Secretary for the time being of the Tribunal; and

"the Tribunal" means the Copyright Tribunal.

(2) A rule or schedule referred to by number means the rule or schedule so numbered in these Rules; a form referred to by number means a form in Schedule 3 so numbered, and a requirement in these Rules for the service of a notice in a specified form shall be taken to have been complied with if the service of the notice is in a form which is substantially in accordance with the form so specified.

References and applications with respect to licensing schemes

Commencement of proceedings (Forms 1 & 2)

3.-(1) Proceedings in relation to a reference or an application with respect to a licensing scheme shall be commenced by the service on the Secretary by the applicant of a notice-

- (a) in Form 1 in the case of a reference under section 118, 119 or 120 of the Act,
 - (b) in Form 2 in the case of an application for the grant of a licence or a review of the Tribunal's order under section 121 or 122 of the Act,
- together with a statement of the applicant's case.

(2) As soon as practicable after receipt of the notice, the Secretary shall serve a copy of the same (with a copy of the applicant's statement) on the operator of the licensing scheme named in the notice and, in the case of a further reference under section 120 of the Act or an application for a review of an order under section 122 of the Act, as the case may be, on every person who was a party to the proceedings when the order of the Tribunal was made.

(3) In the case of a reference under section 118 of the Act the Tribunal shall, as soon as practicable after the receipt of the applicant's notice, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the applicant or the operator of the scheme or both and if, after considering the reference and representations (if any), the Tribunal-

- (a) decides to entertain the reference, it shall give such directions as to the taking of any steps required or authorised under these Rules, or as to any further matter (including any order as to costs) as the Tribunal thinks fit, and
- (b) declines to entertain the reference, it shall direct that no further proceedings shall be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may make under rule 48.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and the operator of the licensing scheme.

Application for special leave (Form 3)

4.-(1) An application under section 120 of the Act for the special leave of the Tribunal on a further reference under that section or an application under section 122 of the Act for the special leave of the Tribunal to review its order under that section shall be made by the service on the Secretary by the applicant of a notice in Form 3, together with a statement of the grounds for the application. The applicant shall serve a copy of the notice and statement on every person who was a party to the reference or application on which the Tribunal made the last previous order with respect to the licensing scheme.

(2) Within 14 days of the service upon him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on the applicant and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, shall grant or dismiss the application (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules, or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and any party who made representations.

Advertisement of reference or application

5.-(1) Except where the Tribunal has declined to entertain a reference under section 118 of the Act, or the Chairman in any other case otherwise directs, the Secretary shall give notice by advertisement in such manner as the Chairman may think fit of every reference or application under section 118, 119, 120, 121 or 122 of the Act.

(2) An advertisement shall state-

(a) the names and addresses of the applicant and any organisation or person on whom a copy of the notice of reference or application has been served in accordance with rule 3;

(b) the nature of the reference or application;

(c) the time, not being less than 21 days from the date of publication of the advertisement, within which-

(i) an objection to the applicant's credentials may be made in accordance with rule 6, and

(ii) any other organisation or person may apply to the Tribunal to be made a party to the proceedings in accordance with rule 7.

Objections to applicant's credentials (Form 4)

6.-(1) Any organisation or person intending to object to the applicant's credentials shall, within the time specified under rule 5(2)(c), serve on the Secretary a notice of objection in Form 4: Provided that the Tribunal or the Chairman may give leave, subject to such conditions as the Tribunal or Chairman may think fit, to serve such notice notwithstanding the expiration of the time specified under that rule.

(2) If notice of objection to the applicant's credentials has been served on the Secretary in accordance with this rule or if the Tribunal intends to make such objection of its own motion, the Secretary shall, on the expiration of the time specified in the advertisement under rule 5(2)(c), serve upon every party to the proceedings a notice of the same, and the proceedings shall (unless the Tribunal or the Chairman shall otherwise direct on the grounds that no reasonable cause of objection has been disclosed) be stayed from the date of such notice until further order.

(3) As soon as practicable after service of the notice under paragraph (2) above, the Chairman shall give directions for the making of representations in writing for the purpose of the consideration by the Tribunal of the objection. After consideration of the representations by the Tribunal the Chairman may, if he thinks fit, give the applicant, any objector and any other party an opportunity of being heard at a hearing to be appointed by the Chairman.

(4) If, after considering the objection and any written or oral representations, the Tribunal is not satisfied of the applicant's credentials, it shall direct that no further proceedings shall be taken by any party in connection with the reference or application, otherwise than in relation to any order for costs which the Tribunal may make under rule 48.

(5) If, after considering the objection and any written or oral representations, the Tribunal is satisfied of the applicant's credentials it shall direct that the reference or application shall proceed and the Tribunal or the Chairman may give such consequential directions as to the taking of any steps required or authorised under these Rules, or as to any further matter as the Tribunal or Chairman may think fit.

(6) When the Tribunal has arrived at its decision on the objection, or where the objection has been withdrawn or is not proceeded with, the Secretary shall serve notice of the same on every party to the proceedings.

Intervener's application (Form 5)

7.-(1) An application to the Tribunal by a person or organisation to be made a party to a reference or an application referred to in rule 3 may be made by serving on the Secretary, within the time specified under rule 5(2)(c), a notice of intervention in Form 5, together with a statement of his interest:

Provided that the Tribunal or the Chairman may give leave, subject to such conditions as the Tribunal or Chairman may think fit, to serve such notice notwithstanding the expiration of the time specified under that rule.

(2) As soon as practicable after receipt of a notice served under this rule the Secretary shall-

- (a) serve a copy of the notice on every other party to the proceedings, and
- (b) serve on the intervener a copy of the applicant's reference or application and statement of case, together with any other notice of intervention which has been served upon him.

Objections to intervener's credentials (Form 6)

8.-(1) Any party intending to object to an intervener's credentials shall, within 14 days of being served with a copy of the notice of intervention under rule 7, serve on the Secretary a notice of objection in Form 6.

(2) The Secretary shall, as soon as practicable after receipt of any notice of objection, serve on every other party to the proceedings a copy of the same.

(3) If the Tribunal intends of its own motion to object to an intervener's credentials, the Secretary shall, on the expiration of the time specified under rule 5(2)(c), serve on the intervener and every other party notice of that intention with a statement of the Tribunal's reasons for the objection.

(4) An objection to an intervener's credentials shall not, subject to any direction to the contrary that the Chairman may give under rule 11(2)(vii), operate as a stay of the proceedings and shall be considered by the Tribunal at the same time as the reference or application in question.

Written response by operator of scheme or intervener

9.-(1) Except where otherwise directed under rule 3(3)(a), the operator of the licensing scheme shall, within 28 days of the service on him of a copy of the applicant's statement of case in accordance with rule 3(2), serve on the Secretary a written answer to the applicant's statement setting out his case.

(2) Within 21 days of the expiration of the time specified under rule 5(2)(c), an intervener shall serve on the Secretary a statement of the case he intends to make.

(3) The Secretary shall serve a copy of such case or answer on every other party to the proceedings within 10 days of the receipt thereof.

Amendment of statement of case and answer

10.-(1) Subject to paragraph (3) of this rule, a party may at any time amend his statement of case or answer by serving on the Secretary the amended statement or answer.

(2) On being served with an amended statement of case or answer, the Secretary shall as soon as practicable serve a copy thereof on every other party.

(3) No amended statement of case or answer shall, without the leave of the Chairman, be served after such date as the Chairman may direct under rule 11(2)(iii).

Chairman's directions

11.-(1) Upon the expiration of the time specified by rule 9(2) for the service on the Secretary of a statement of case or answer, the Chairman shall appoint a date and place for the attendance of the parties for the purpose of his giving directions as to the further conduct of the proceedings, and the Secretary shall serve on every party and every person whose application under rule 7(1) has not been determined not less than 21 days' notice of such date and place.

(2) On the appointed day, the Chairman shall afford every party attending the appointment an opportunity of being heard and, after considering any representations made orally or in writing, give such directions as he thinks fit with a view to the just, expeditious and economical disposal of the proceedings and, without prejudice to the generality of the foregoing, may give directions as to-

- (i) the date and place of any oral hearing requested by any party or which the Chairman for any reason considers necessary, and the procedure (including the number of representatives each party may appoint for the purpose of such hearing) and the timetable (including the allocation of time for the making of representations by each party) to be followed at such a hearing;
- (ii) the procedure to be followed with regard to the submission and exchange of written arguments;
- (iii) the date after which no amended statement of case or answer may be served without leave;
- (iv) the preparation and service by each party, or any one party if all other parties agree, of a schedule setting out the issues to be determined by the Tribunal and brief particulars of the contentions of each party in relation thereto;
- (v) the admission of any facts or documents, and the discovery and inspection of documents;
- (vi) the giving of evidence on affidavit; and
- (vii) the consideration by the Tribunal of whether any objection made to an intervener's credentials under rule 8 shall operate as a stay of the proceedings.

(3) The Chairman may postpone or adjourn to a later date to be appointed by him the giving of any directions under this rule and, at any time after directions have been given under this rule the Chairman may, whether or not any application on that behalf has been made under rule 12, give such further directions as he may think fit.

(4) If any party fails to comply with any direction given or order made under this rule or rule 12, the Chairman may, without prejudice to the making of any order under rule 53, give such consequential directions as may be necessary and may order such a party to pay any costs occasioned by his default.

Application for directions

12.-(1) A party may, at any stage of the proceedings, apply to the Tribunal for directions with respect to any issue or other matter in the proceedings and, except where the Tribunal (whether generally or in any particular case) otherwise directs or these Rules otherwise provide, every such application shall be disposed of by the Chairman.

(2) The application shall be made by the service of a notice on the Secretary (stating the grounds upon which it is made) and, unless the notice is accompanied by the written consent of all parties to

the proceedings, the party making the application shall serve a copy of the application on every other party to the proceedings and inform the Secretary of the date of such service.

(3) Any party who objects to the application may, within 7 days after being served with the copy thereof, serve a notice of objection (stating the grounds of objection) on the Secretary and he shall serve a copy of the same on the applicant and any other party to the proceedings and inform the Secretary of the date of such service.

(4) After considering the application and any objection thereto and, if he considers necessary, after having given all parties concerned an opportunity of being heard, the Chairman may make such order in the matter as he thinks fit and give such consequential directions as may be necessary.

Consolidation of proceedings

13. Where there is pending before the Tribunal more than one reference under section 118, 119, or 120 of the Act, or more than one application under section 121 or 122 of the Act relating to the same licensing scheme, the Chairman may if he thinks fit, either of his own motion or on an application made under rule 12, order that some or all of the references or applications, as the case may be, shall be considered together, and may give such consequential directions as may be necessary:

Provided that the Chairman shall not make an order under this rule of his own motion without giving all parties concerned a reasonable opportunity of objecting to the proposed order.

Procedure and evidence at hearing

14.-(1) Every party to a reference or application which is considered at an oral hearing before the Tribunal shall be entitled to attend the hearing, to address the Tribunal, to give evidence and call witnesses.

(2) Except where the Tribunal or the Chairman otherwise orders in the case of an application for directions under rule 12, the hearing shall be in public.

(3) Evidence before the Tribunal shall be given orally or, if the parties so agree or the Tribunal or the Chairman so orders, by affidavit, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.

Representation and rights of audience

15.-(1) Subject to paragraph (5) of this rule, a party may at any stage of the proceedings appoint some other person to act as agent for him in the proceedings.

(2) The appointment of an agent shall be made in writing and shall not be effective until notice thereof has been served on the Secretary, and a copy of the same has been served on every other party and the Secretary informed of the date of such service.

(3) Only one agent shall be appointed to act for a party at any one time.

(4) For the purpose of service on a party of any document, or the taking of any step required or authorised by these Rules, an agent appointed by a party shall be deemed to continue to have authority to act for such a party until the Secretary and every other party has received notice of the termination of his appointment.

(5) A party or an agent appointed by him under paragraph (1) of this rule may be represented at any hearing, whether before the Tribunal or the Chairman, by a barrister, or in Scotland an advocate, or a solicitor, or by any other person allowed by the Tribunal or the Chairman to appear on his behalf or may, save in the case of a corporation or unincorporated body, appear in person.

Withdrawal of reference or application

16.-(1) The applicant may withdraw his reference or application made under rule 3 at any time before it has been finally disposed of by serving a notice thereof on the Secretary, but such withdrawal shall be without prejudice to the Tribunal's power to make an order as to the payment of costs incurred up to the time of service of the notice. The applicant shall serve a copy of the notice on every other party to the proceedings and inform the Secretary of the date of such service.

(2) Any party to the proceedings upon whom a copy of the notice of withdrawal is served under this rule may, within 14 days of such service, apply to the Tribunal for an order that, notwithstanding such withdrawal, such reference or application should proceed to be determined by the Tribunal, and if the Tribunal decides, at its discretion, to proceed with such reference or application it may for that purpose substitute such party as the applicant to the proceedings and give such consequential directions as may be necessary.

Decision of Tribunal

17. The final decision of the Tribunal on a reference or an application made under rule 3 shall be given in writing and shall include a statement of the Tribunal's reasons and, where on any further reference or application for review of the Tribunal's order under section 120 or 122 of the Act the Tribunal has varied the licensing scheme, there shall be annexed to the decision a copy of the scheme as so varied, and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision.

Publication of decision

18. The Secretary shall cause a copy of the Tribunal's decision to be made available at the office for public inspection during office hours and, if the Chairman so directs, shall cause to be advertised, in such manner as the Chairman thinks fit, short particulars of the decision.

Effective date of order

19. Except where the operation of the order is suspended under rule 42 or 43, the order of the Tribunal shall take effect from such date, and shall remain in force for such period, as shall be specified in the order.

References and applications with respect to licensing by licensing bodies

Commencement of proceedings (Forms 7 & 8)

20.-(1) Proceedings with respect to licensing by licensing bodies shall be commenced by the service on the Secretary by the applicant of a notice-

(a) in Form 7 in the case of a reference under section 125 or 126 of the Act,
(b) in Form 8 in the case of an application for a review of an order under section 127 of the Act,
together with a statement of the applicant's case.

(2) As soon as practicable after receipt of the notice, the Secretary shall serve a copy of the same (with a copy of the applicant's statement) on the licensing body named in the notice under paragraph (1)(a) above, and in the case of an application for review of an order under section 127, on any person named in the notice under paragraph (1)(b) above.

(3) In the case of a reference under section 125 of the Act the Tribunal shall, as soon as practicable after the receipt of the applicant's notice, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the applicant or the licensing body or both and if, after considering the reference and representations (if any) the Tribunal-

(a) decides to entertain the reference, it shall give such directions as to the taking of any steps required or authorised under these Rules, or as to any further matter (including any order as to costs) as the Tribunal thinks fit, and

(b) declines to entertain the reference, it shall direct that no further proceedings shall be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may make under rule 48.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and the licensing body.

Application for special leave (Form 3)

21.-(1) An application under section 127(2) of the Act for the special leave of the Tribunal for the review of its order under that section shall be made by the service on the Secretary by the applicant of a notice in Form 3 together with a statement of the grounds for the application. The applicant shall serve a copy of the notice and statement on every person who was a party to the reference on which the Tribunal made the last previous order with respect to the licence.

(2) Within 14 days of the service upon him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on the applicant and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, shall grant or dismiss the application (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on any party who made representations.

Procedure, and decision of Tribunal

22.-(1) Except where otherwise directed under rule 20(3), the licensing body or other person shall, within 21 days of the service of the notice under rule 20(2), serve on the Secretary his written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of a reference or application under rules 20 and 21 as they apply to proceedings in respect of a reference or an application under rule 3.

(3) The final decision of the Tribunal on a reference or an application under rule 20 shall be given in writing and shall include a statement of the Tribunal's reasons and there shall be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied.

(4) The Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rules 18 and 19 shall apply with regard to the publication and the effective date of the decision.

Intervener's application (Forms 5 & 6)

23.-(1) A person or organisation who claims to have a substantial interest in proceedings in respect of a reference or an application under rule 20 may apply to the Tribunal to be made a party to that reference or application by serving on the Secretary a notice of intervention in Form 5, together with a statement of his interest.

(2) As soon as practicable after receipt of a notice under this rule the Secretary shall-

- (a) serve a copy of the notice on every other party to the proceedings, and
- (b) serve on the intervener a copy of the applicant's reference or application and statement of case, together with any other notice of intervention which has been served on him.

(3) Within 14 days of the service upon him of the notice, a party intending to object to an intervener's credentials shall serve on the Secretary a notice of objection in Form 6 and shall serve a copy of the same on the intervener and inform the Secretary of the date of such service.

(4) The Tribunal, after considering the intervener's application and any objection to his credentials and, if it considers necessary, after having given the intervener and any party who has served a notice of objection an opportunity of being heard, shall, if satisfied of the substantial interest of the intervener, grant the application and may thereupon give such directions or further directions as to the taking of any steps required or authorised under these Rules or as to any further matter as may be necessary to enable the intervener to participate in the proceedings as a party.

(5) Subject to any direction to the contrary that the Chairman may give under rule 11(2)(vii) an objection to an intervener's credentials shall not operate as a stay of proceedings and shall be considered by the Tribunal at the same time as the reference or application in question.

Appeals against orders made by the Secretary of State

Commence-ment of appeal proceedings (Forms 9 & 10)

24. An appeal to the Tribunal under section 139 of the Act against an order made by the Secretary of State may be made within 6 weeks of the making of the order or such further period as the Tribunal may allow-

(a) in the case of an order under section 137 of the Act, by the service by the copyright owner on the Secretary of a notice in Form 9, together with a statement of his case, and by serving a copy thereof on the licensing body and any person or organisation who was given notice under that section; and

(b) in the case of an order under section 138, by the copyright owner or any person or organisation who was given notice under that section and who made representations, by the service on the Secretary of a notice in Form 10, together with a statement of his case, and by serving a copy thereof on any other person or organisation who made representations under that section.

Procedure, and decision of Tribunal

25.-(1) Within 21 days of the service of the notice upon him under this rule a person or organisation shall serve on the Secretary a written answer to the appellant's statement setting out his case, and shall serve a copy thereof on the appellant and any other person served with notice under this rule and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of an appeal under rule 24 as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an appeal under rule 24 shall be given in writing and shall include a statement of the Tribunal's reasons and, where the Tribunal varies any previous order or makes any other order, there shall be annexed to the decision a copy of that order as varied or, as the case may be, that other order; and the Secretary shall as soon as practicable serve on every party to the appeal a copy of the Tribunal's decision. Rules 18 and 19 shall apply with regard to the publication and the effective date of the decision.

Intervener's application (Forms 5 & 6)

26. A person or organisation who claims to have a substantial interest in proceedings in respect of an appeal under rule 24 may, in accordance with rule 23, apply to the Tribunal to be made a party and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20.

Application to settle the royalty or other sum payable

Applications and references with respect to use as of right of sound recordings in broadcasts and cable programme services

Commencement of proceedings (Forms 10A, 10B & 10C)

26A.—(1) Proceedings with respect to use as of right of sound recordings in broadcasts or cable programme services shall be commenced by the service on the Secretary by the applicant of a notice—

(a) in Form 10A in the case of an application to settle terms of payment under section 135D of the Act,

(b) in Form 10B in the case of a reference under section 135E of the Act,

(c) in Form 10C in the case of an application for a review of an order under section 135F of the Act,

together with a statement of the applicant's case.

(2) As soon as practicable after receipt of the notice, the Secretary shall serve a copy of the same (with a copy of the applicant's statement) on the licensing body named in the notice and, in the case of an application for review of an order under section 135F, on every person who was a party to the proceedings when the original order of the Tribunal was made.

(3) Except where the Chairman otherwise directs, the Secretary shall give notice by advertisement in such manner as the Chairman may think fit of every reference or application under section 135D, 135E or 135F of the Act.

Application for special leave (Form 3)

26B.—(1) An application under section 135F (2) of the Act for the special leave of the Tribunal for the review of its order under that section shall be made by the service on the Secretary by the applicant of a notice in Form 3 together with a statement of the grounds for the application. The applicant shall serve a copy of the notice and statement on every person who was a party to the application or reference on which the Tribunal made the last previous order with respect to the licence.

(2) Within 14 days of the service upon him of such notice, any such party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on the applicant and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, shall grant or dismiss the application (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on any party who made representations.

Procedure, and decision of Tribunal

26C.—(1) Within 21 days of the service of the notice under rule 26A, the licensing body or other person shall serve on the Secretary his written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of a reference or application under rules 26A and 26B as they apply to proceedings in respect of a reference or an application under rule 3.

(3) The final decision of the Tribunal on a reference or an application under rule 26A shall be given in writing and shall include a statement of the Tribunal's reasons and there shall be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied.

(4) The Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

26D. A person or organisation who claims to have a substantial interest in proceedings in respect of a reference or an application under rule 26A may, in accordance with rule 23, apply to the Tribunal to be made a party to that reference or application and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20." .

Commencement of proceedings (Forms 11 & 12)

27. Proceedings in relation to an application under section 142 of the Act shall be commenced by the service on the Secretary by the copyright owner or the person claiming to be treated as licensed by him-

(a) of a notice in Form 11, in the case of an application under subsection (1) of that section to settle the royalty or other sum payable in pursuance of section 66 of the Act, and

(b) of a notice in Form 12, in the case of an application under subsection (3) of that section for a variation of an order of the Tribunal made under subsection (2) of that section,

together with a statement of the applicant's case, and by serving a copy thereof on the other party.

Application for special leave (Form 3)

28.-(1) An application under section 142(4) of the Act for the special leave of the Tribunal for a variation of an order under that section shall be made by the service on the Secretary by the applicant of a notice in Form 3, together with a statement of the grounds for the application, and by serving a copy thereof on the other party.

(2) Within 14 days of the service upon him of a copy of the notice under this rule, the other party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on the applicant and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, shall grant or dismiss the application (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on every party who made representations.

Procedure, and decision of Tribunal

29.-(1) Within 21 days of the service of the notice under rule 27 the other party shall serve on the Secretary his written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of an application under rules 27 and 28 as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an application under rule 27 shall be given in writing and shall include a statement of the Tribunal's reasons, and there shall be annexed to the decision a copy of the order and where the Tribunal has varied a previous order, a copy of that order as varied; and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rules 18 and 19 shall apply with regard to the publication and the effective date of the decision.

Intervener's application (Forms 5 & 6)

30. A person or organisation who claims to have a substantial interest in proceedings in respect of an application under rule 27 may, in accordance with rule 23, apply to the Tribunal to be made a party and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20.

Application to settle terms of licence as of right

Commencement of proceedings (Form 13)

31. Proceedings in relation to an application by a person requiring a licence in the circumstances described in section 144(4) of the Act shall be commenced by the service on the Secretary by the applicant of a notice in Form 13 with a statement of the terms required and the reasons for the same, and he shall serve a copy of the same on the copyright owner.

Procedure, and decision of Tribunal

32.-(1) Within 21 days of the service of the notice under rule 31, the copyright owner may serve on the Secretary his written answer setting out the grounds of his objection and the terms of the licence which he considers the Tribunal should settle, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of an application under rule 31 as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an application under rule 31 shall be given in writing and shall include a statement of the Tribunal's reasons, and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

33. A person or organisation who claims to have a substantial interest in proceedings in respect of an application under rule 31 may, in accordance with rule 23, apply to the Tribunal to be made a party and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20.

Application for Tribunal's consent on behalf of performer

Commencement of proceedings (Form 14)

34. Proceedings under section 190 of the Act for the Tribunal's consent on behalf of the performer to the making of a recording from a previous recording of a performance shall be commenced by the service by the applicant on the Secretary of a notice in Form 14 together with a statement-

- (a) where the identity or whereabouts of the performer cannot be ascertained, of the inquiries made by him in that respect and the result of those inquiries, or
- (b) where the identity or whereabouts of the performer are known, of the grounds on which the applicant considers that the performer's withholding of consent is unreasonable, and by serving a copy thereof on the performer.

Inquiries by Tribunal

35.-(1) Where a notice has been served in accordance with rule 34(a), the Tribunal shall, after requiring of the applicant such further particulars as it may consider necessary, cause to be served on such persons as it considers are likely to have relevant information with regard to the identity or the whereabouts of the performer a notice seeking such information, and at the same time cause to be published, in such publications as it considers appropriate and at such intervals as it may determine, a notice setting out brief particulars of the application and requesting information on the identity or whereabouts of the performer.

(2) On the expiration of 28 days from the date of the publication of the notice, or the date of publication of the last such notice, the Tribunal may, on being satisfied that the identity or whereabouts of the performer cannot be ascertained, make an order giving its consent on such terms as it thinks fit.

Procedure, and decision of Tribunal

36.-(1) Within 21 days of the service of the notice under rule 34(b), the performer may serve on the Secretary his answer setting out his case and of the grounds for his withholding of consent, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of an application under rule 34(b) as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an application under rule 34 shall be given in writing and shall include a statement of the Tribunal's reasons and where the Tribunal has, in default of an agreement between the applicant and the performer, made an order as to the payment to be made to the performer in consideration of the consent given on his behalf by the Tribunal, there shall be annexed to the decision a copy of that order; and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rules 18 and 19 shall apply with regard to the publication and the effective date of the decision.

Intervener's application (Forms 5 & 6)

37. A person or organisation who claims to have a substantial interest in proceedings in respect of an application under rule 34 may, in accordance with rule 23, apply to the Tribunal to be made a party, and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20.

Application for Tribunal's determination of royalty payable to the Hospital for Sick Children

Commencement of proceedings (Forms 15 & 16)

38. Proceedings under paragraph 5 of Schedule 6 to the Act for the determination of the royalty or other remuneration to be paid to the Hospital for Sick Children shall be commenced by the service on the Secretary by the applicant of a notice-

(a) in Form 15, in the case of an application under paragraph 5(1) of Schedule 6 to the Act, and
(b) in Form 16, in the case of an application for a review of an order under paragraph 5(2) of that Schedule,

together with a statement of the applicant's case, and by serving a copy thereof on the other party.

Application for special leave (Form 3)

39.-(1) An application for the special leave of the Tribunal for the review of an order under paragraph 5(3) of Schedule 6 to the Act shall be made by serving on the Secretary a notice in Form 3 together with a statement of the grounds for the application, and by serving a copy thereof on the person who was a party to the proceedings when the order of the Tribunal was made.

(2) Within 14 days of the service upon him of a copy of the notice under this rule, the other party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on every other party to the proceedings and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made such representations an opportunity of being heard, shall grant or dismiss the application (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on any party who made representations.

Procedure, and decision of Tribunal

40.-(1) Within 21 days of the service of the notice under rule 38, the other party shall serve on the Secretary a written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of such service.

(2) Rules 10 to 16 shall apply to proceedings in respect of an application under rules 38 and 39 as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an application under rule 38 shall be given in writing and shall include a statement of the Tribunal's reasons and where the Tribunal has varied a previous order there shall be annexed to the decision a copy of that order as varied; and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

41. A person or organisation who claims to have a substantial interest in proceedings in respect of an application under rule 38 may, in accordance with rule 23, apply to the Tribunal to be made a party and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20.

Use of information as of right: application to settle terms of payment

Commencement of proceedings (Forms 16A & 16B)

41A.—(1) Proceedings under Schedule 17 to the 1990 Act for the settlement of terms of payment to be made by a publisher to a proceedings person providing a programme service shall be commenced by the service on the Secretary by the applicant of a notice—

(a) in Form 16A, in the case of an application under paragraph 5(1) of Schedule 17 to the 1990 Act,
(b) in Form 16B, in the case of an application for a review of an order under paragraph 6(1) of that Schedule,

together with a statement of the applicant's case.

(2) As soon as practicable after receipt of the notice, the Secretary shall serve a copy of the same (with a copy of the applicant's statement) on the person providing the programme service named in the notice and, in the case of an application for review of an order under paragraph 6(1) of Schedule 17 to the 1990 Act, on every person who was a party to the proceedings when the original order of the Tribunal was made.

(3) Except where the Chairman otherwise directs, the Secretary shall give notice by advertisement in such manner as the Chairman may think fit of every reference or application under paragraph 5(1) or 6(1) of Schedule 17 to the 1990 Act.

Application for special leave (Form 3)

41B.—(1) An application for the special leave of the Tribunal for the review of an order under paragraph 6(2) of Schedule 17 to the 1990 Act shall be made by serving on the Secretary a notice in Form 3, together with a statement of the grounds for the application. The applicant shall serve a copy of the notice and statement on every person who was a party to the application when the order of the Tribunal was made.

(2) Within 14 days of the service upon him of a copy of the notice under that rule, the other party may make representations in writing to the Tribunal regarding the application for special leave, and he shall serve a copy of any such representations on every other party to the proceedings and inform the Secretary of the date of such service.

(3) The Tribunal, after considering the application and any representations and, if it considers necessary, after having given the applicant and any such party who has made representations an opportunity of being heard, shall grant or dismiss the application for special leave (with such order as to costs) as it may think fit, and if it grants the application it may give such directions as to the taking of any steps required or authorised under these Rules or as to any further matter as the Tribunal thinks fit.

(4) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall serve a copy thereof on the applicant and on any party who made representations.

Procedure, and decision of Tribunal

41C.—(1) Within 21 days of the service of the notice under rule 41A, the other party shall serve on the Secretary a written answer to the applicant's statement, and shall serve a copy of the same on the applicant and inform the Secretary of the date of service.

(2) Rules 10 to 16 shall apply in respect of an application under rules 41A and 41B as they apply to proceedings in respect of an application under rule 3.

(3) The final decision of the Tribunal on an application under rule 41A shall be given in writing and shall include a statement of the Tribunal's reasons, and there shall be annexed to the decision a copy of the order and where the Tribunal has varied a previous order, a copy of that order as varied, and the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision. Rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

41D. A person or organisation who claims to have a substantial interest in the proceedings in respect of any application under rule 41A may, in accordance with rule 23, apply to the Tribunal to be made a party to that application and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20." .

Appeal to the Court from decision of Tribunal and suspension of Tribunal's orders

Notice of appeal (Form 17)

42.—(1) An appeal to the High Court or, in the case of proceedings of the Tribunal in Scotland, to the Court of Session under section 152 of the Act on a point of law arising from a decision of the Tribunal shall be brought within 28 days of the date of the decision of the Tribunal or within such further period as the court may, on an application to it, allow.

(2) A party so appealing to the court on a point of law shall as soon as may be practicable serve on the Secretary a notice in Form 17 of such an appeal, and shall serve a copy thereof on every person who was a party to the proceedings giving rise to that decision.

(3) Where an appeal has been lodged with the court, the Tribunal shall not make any further order on the reference or application which is the subject of the appeal until the court has given its decision thereon.

(4) On receipt of the notice of appeal by the Secretary the Tribunal may of its own motion suspend the operation of any order contained in its decision, and shall, if an order is so suspended, cause notice of the same to be served on every person affected by the suspension and may, if it thinks fit, cause notice of the suspension to be published in such manner as it may direct.

Application for suspension of order (Form 18)

43.-(1) A party to the proceedings may, pending the determination of an appeal under rule 42, apply to the Tribunal to suspend the operation of an order made by it by serving on the Secretary a notice in Form 18 within 7 days of the receipt of the decision of the Tribunal together with a statement of the grounds for suspension, and he shall serve a copy of the same on every person who was a party to the proceedings giving rise to that decision and inform the Secretary of the date of such service.

(2) Within 14 days of the service of the notice under paragraph (1) above a party may serve on the Secretary a statement setting out the grounds of his objection to the applicant's case, and shall serve a copy of the same on every person who was a party to the proceedings giving rise to the decision and inform the Secretary of the date of such service.

(3) Rules 10 to 16 shall apply to proceedings in respect of an application under this rule as they apply to proceedings in respect of an application under rule 3.

(4) Where the Tribunal, after consideration of the application and any representations, refuses an application to suspend the operation of its order, the Secretary shall as soon as practicable serve on every party to the proceedings a copy of the Tribunal's decision together with a statement of the Tribunal's reasons for refusal.

(5) Where any order of the Tribunal has been suspended upon the application of a party to the proceedings or by the court the Secretary shall serve notice of the suspension on all parties to the proceedings, and if particulars of the order have been advertised shall cause notice of the suspension to be advertised in the same manner, and rule 18 shall apply with regard to the publication of the decision.

Intervener's application (Forms 5 & 6)

44. A person or organisation who claims to have a substantial interest in proceedings in respect of an application under rule 43 may, in accordance with rule 23, apply to the Tribunal to be made a party, and that rule shall apply to proceedings in respect of such an application as it applies to proceedings in respect of an application under rule 20.

Effect of suspension of order

45. If the operation of any order is suspended under rule 42 or 43, then, while the order remains suspended, sections 123 and 128 of the Act shall not have effect in relation to the order.

Miscellaneous and general

Application of Arbitration Acts

46. The provisions of sections 12, 14, 17 and 26 of the Arbitration Act 1950[3] (which are set out in Part 1 of Schedule 2), shall apply in the case of proceedings before the Tribunal in England and Wales, and the provisions of sections 13, 14, 16, 21 and 24 of, and paragraphs 4, 5 and 8 of Schedule 1 to, the Arbitration Act (Northern Ireland) 1937[4] (which are set out in Part 2 of Schedule 2), shall apply in the case of proceedings before the Tribunal in Northern Ireland, as those provisions respectively apply to an arbitration where no contrary intention is expressed in the arbitration agreement.

Enforcement of Tribunal's orders in Scotland

47. Any decision of the Tribunal may be enforced in Scotland in like manner as a recorded decree arbitral.

Costs

48.-(1) The Tribunal may, at its discretion, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings.

(2) Any party against whom an order for costs is made shall, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or such proportion of the costs as may be just, and in the last mentioned case the Tribunal may assess the sum to be paid or may direct that it be assessed by the Chairman, or taxed by a taxing officer of the Supreme Court or the Supreme Court of Northern Ireland or by the Auditor of the Court of Session.

Fees

49. The fees specified in Schedule 1 shall be payable in respect of the matters therein mentioned.

Service of documents

50.-(1) Any notice or other document required by these Rules to be served on any person may be sent to him by pre-paid post at his address for service, or, where no address for service has been given, at his registered office, principal place of business or last known address, and every notice or other document required to be served on the Secretary may be sent by pre-paid post to the Secretary at the office.

(2) Service of any notice or document on a successor in title or successor in interest of a party to any proceedings shall be effective if served or sent to him in accordance with this rule.

(3) Any notice or other document required to be served on a licensing body or organisation which is not a body corporate may be sent to the secretary, manager or other similar officer.

(4) The Tribunal or the Chairman may direct that service of any notice or other document be dispensed with or effected otherwise than in the manner provided by these Rules.

(5) Service of any notice or document on a party's solicitor or agent shall be deemed to be service on such party, and service on a solicitor or agent acting for more than one party shall be deemed to be service on every party for whom such a solicitor or agent acts.

Notice of intention to exercise right

50A. (revoked)

Time

51.-(1) Except in the case of the time limit imposed under rule 42(1), the time for doing any act may (whether it has already expired or not) be extended-

- (a) with the leave of the Tribunal or the Chairman, or
- (b) by the consent in writing of all parties, except where the Tribunal or Chairman has fixed the time by order or, if the time is prescribed by these Rules, has directed that it may not be extended or further extended without leave.

(2) A party in whose favour time is extended by consent under paragraph (1)(b) above shall, as soon as may be practicable after the necessary consents have been obtained, serve notice thereof on the Secretary.

(3) Where the last day for the doing of any act falls on a day on which the office is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which the office is open.

Office hours

52. The office shall be open between 10.00am and 4.00pm Monday to Friday, excluding Good Friday, Christmas Day and any day specified or proclaimed to be a bank holiday under section 1 of the Banking and Financial Dealings Act 1971[5].

Failure to comply with directions

53. If any party fails to comply with any direction given, in accordance with these Rules, by the Tribunal or the Chairman, the Tribunal may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without leave of the Tribunal.

Power of Tribunal to regulate procedure

54. Subject to the provisions of the Act and these Rules, the Tribunal shall have power to regulate its own procedure.

Transitional provisions and revocation of previous Rules

55.-(1) In relation to any proceedings which are pending under Part IV of the Copyright Act 1956[6] when these Rules come into force, these Rules shall apply subject to such modifications as the Tribunal or the Chairman may, in the circumstances, consider appropriate.

(2) The Performing Right Tribunal Rules 1965[7], and the Performing Right Tribunal (Amendment) Rules 1971[8] are hereby revoked, but without prejudice to anything done thereunder.

Verenigde Staten

US Title 17 (Copyright Act) Chapter 8 Copyright Arbitration Royalty Panels

Sec.

801. Copyright arbitration royalty panels: Establishment and purpose.

802. Membership and proceedings of copyright arbitration royalty panels.

803. Institution and conclusion of proceedings.

Sec. 801. Copyright arbitration royalty panels: Establishment and purpose

(a) Establishment. -

The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.

(b) Purposes. -

Subject to the provisions of this chapter, the purposes of the copyright arbitration royalty panels shall be as follows:

(1) To make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 114, 115, 116, and 119, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

(A) To maximize the availability of creative works to the public;

(B) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;

(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(2) To make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act: Provided, That if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted: And provided further, That no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The copyright arbitration royalty panels may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor,

whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the copyright arbitration royalty panels shall consider, among other factors, the economic impact on copyright owners and users: Provided, That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction hereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment.

(3) To distribute royalty fees deposited with the Register of Copyrights under sections 111, 116, 119(b), and 1003, and to determine, in cases where controversy exists, the distribution of such fees.

(c) Rulings. -

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel, including -

(1) authorizing the distribution of those royalty fees collected under sections 111, 119, and 1005 that the Librarian has found are not subject to controversy; and

(2) accepting or rejecting royalty claims filed under sections 111, 119, and 1007 on the basis of timeliness or the failure to establish the basis for a claim.

(d) Support and Reimbursement of Arbitration Panels. -

The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter, and shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. Each such arbitrator is an independent contractor acting on behalf of the United States, and shall be hired pursuant to a signed agreement between the Library of Congress and the arbitrator. Payments to

the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).

Sec. 802. Membership and proceedings of copyright arbitration royalty panels

(a) Composition of Copyright Arbitration Royalty Panels. -

A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

(b) Selection of Arbitration Panel. -

Not later than 10 days after publication of a notice in the Federal Register initiating an arbitration proceeding under section 803, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists provided by professional arbitration associations. Qualifications of the arbitrators shall include experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes, and any qualifications which the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt by regulation. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator. The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter.

(c) Arbitration Proceedings. -

Copyright arbitration royalty panels shall conduct arbitration proceedings, subject to subchapter II of chapter 5 of title 5, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 112, 114, 116, or 119, any transmitting organization entitled to a statutory license under section 112(f), any person entitled to a statutory license under section 114(d), any person entitled to a compulsory license under section 115, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. In ratemaking proceedings, the parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct. In distribution proceedings, the parties shall bear the cost in direct proportion to their share of the distribution.

(d) Procedures. -

Effective on the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, the Librarian of Congress shall adopt the rules and regulations set forth in chapter 3 of title 37 of the Code of Federal Regulations to govern proceedings under this chapter. Such rules and regulations shall remain in effect unless and until the Librarian, upon the recommendation of the Register of Copyrights, adopts supplemental or superseding regulations under subchapter II of chapter 5 of title 5.

(e) Report to the Librarian of Congress. -

Not later than 180 days after publication of the notice in the Federal Register initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

(f) Action by Librarian of Congress. -

Within 90 days after receiving the report of a copyright arbitration royalty panel under subsection (e), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title. If the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of an additional 30-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

(g) Judicial Review. -

Any decision of the Librarian of Congress under subsection (f) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. When this title provides that the royalty rates or terms that were previously in effect are to expire on a specified date, any adjustment by the Librarian of those rates or terms shall be effective as of the day following the date of expiration of the rates or terms that were previously in effect, even if the Librarian's decision is rendered on a later date. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 112, 114, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case to the Librarian for arbitration proceedings in accordance with subsection (c).

(h) Administrative Matters. -

(1) Deduction of costs of library of congress and copyright office from royalty fees. -

The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the

reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants. In addition, all funds made available by an appropriations Act as offsetting collections and available for deductions under this subsection shall remain available until expended. In ratemaking proceedings, the reasonable costs of the Librarian of Congress and the Copyright Office shall be borne by the parties to the proceedings as directed by the arbitration panels under subsection (c).

(2) Positions required for administration of compulsory licensing. -

Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

Sec. 803. Institution and conclusion of proceedings

(a)

(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 112, 114, 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the schedule set forth in paragraphs (2), (3), (4) and (5), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year or as prescribed in section 115(c)(3)(D).

(4)

(A) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic musical works embodied in phonorecords which had been subject to the terminated

or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

(5) With respect to proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 112 or 114, the Librarian of Congress shall proceed when and as provided by those sections.

(b) With respect to proceedings under subparagraph (B) or (C) of section 801(b)(2), following an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established by the Copyright Royalty Tribunal or the Librarian of Congress, may, within twelve months, file a petition with the Librarian declaring that the petitioner requests an adjustment of the rate. In this event the Librarian shall proceed as in subsection (a) of this section. Any change in royalty rates made by the Copyright Royalty Tribunal or the Librarian of Congress pursuant to this subsection may be reconsidered in 1980, 1985, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be.

(c) With respect to proceedings under section 801(b)(1), concerning the determination of reasonable terms and rates of royalty payments as provided in section 118, the Librarian of Congress shall proceed when and as provided by that section.

(d) With respect to proceedings under section 801(b)(3) or (4), concerning the distribution of royalty fees in certain circumstances under section 111, 116, 119, or 1007, the Librarian of Congress shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

Copyright Arbitration Royalty Panel rules of procedure

Code of Federal Regulations title 37 – Patents, Trademarks and copyrights
Chapter II Copyright Office, Library of Congress

Part 251

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Authority: 17 U.S.C. 801-803.

Source: 59 FR 23981, May 9, 1994, unless otherwise noted.

Subpart A--Organization

Sec. 251.1 Official addresses.

Claims, pleadings, and general correspondence should be addressed to:

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest

Station, Washington, DC 20024

or, hand-delivered to:

Office of the Copyright General Counsel, Room 403, James Madison
Building, 101 Independence Avenue, SE., Washington, DC 20540

[61 FR 63717, Dec. 2, 1996]

Sec. 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

- (a) To make determinations concerning royalty rates for the cable compulsory license, 17 U.S.C. 111;
- (b) To make determinations concerning royalty rates and terms for making ephemeral recordings, 17 U.S.C. 112(e);
- (c) To make determinations concerning royalty rates and terms for the public performance of sound recordings by certain digital audio transmissions, 17 U.S.C. 114;
- (d) To make determinations concerning royalty rates for making and distributing phonorecords, and royalty rates and terms for digital transmissions that constitute digital phonorecord deliveries, 17 U.S.C. 115;
- (e) To make determinations concerning royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license expires or is terminated and is not replaced by another such license agreement, 17 U.S.C. 116;
- (f) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations for certain copyrighted works, 17 U.S.C. 118;
- (g) To make determinations concerning royalty rates for the satellite carrier compulsory license, 17 U.S.C. 119; and
- (h) To make determinations concerning the distribution of cable and satellite carrier royalty fees and digital audio recording devices and media payments deposited with the Register of Copyrights, 17 U.S.C. 111, 119, and chapter 10, respectively.

[61 FR 37215, July 17, 1996, as amended at 63 FR 65556, Nov. 27, 1998]

Sec. 251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit before January 1, 1998, and every two years thereafter, a list of persons qualified to serve as arbitrators on a Copyright Arbitration Royalty Panel. The list shall contain the following for each person:

- (1) The full name, address, and telephone number of the person.
- (2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including

areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under Sec. 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

(b) After January 1, 1998, and every two years thereafter, the Librarian of Congress shall publish in the Federal Register a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter. With respect to persons on the arbitrator list, the Librarian will make available for copying and inspection the information provided under paragraph (a) of this section.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

Sec. 251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to a proceeding may, during the 45-day period specified in Sec. 251.45(b)(2)(i), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 45-day period specified in Sec. 251.45(b)(1)(i), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

Sec. 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a Copyright Arbitration Royalty Panel, a person must, at a minimum, have the following qualifications:

(a) Admitted to the practice of law in any state, territory, trust

territory, or possession of the United States.

(b) Ten or more years of legal practice.

(c) Experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes.

[59 FR 23981, May 9, 1994, as amended at 61 FR 63717, Dec. 2, 1996]

Sec. 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the Federal Register initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two arbitrators from the arbitrator list for that calendar year.

(b) The two arbitrators so selected shall, within ten days of their selection, choose a third arbitrator from the same arbitrator list. The third arbitrator shall serve as the chairperson of the panel during the course of the proceedings.

(c) If the two arbitrators fail to agree upon the selection of the third, the Librarian will promptly select the third arbitrator from the same arbitrator list.

(d) The third arbitrator so chosen shall serve as the chairperson of the panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the panel.

(e) Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

(f) If, before the commencement of hearings in a proceeding, one or more of the arbitrators is unable to continue service on the CARP, the Librarian will suspend the proceeding as provided by Sec. 251.8, and will inaugurate a procedure to bring the CARP up to the full complement of three arbitrators. Where one or two vacancies exist, and either or both of the vacant seats were previously occupied by arbitrators selected by the Librarian, the Librarian will select the necessary replacements from the current arbitrator list. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators shall select the replacement from the arbitrator list, and the person chosen shall serve as chairperson. If there are two vacant seats, and one of them was previously occupied by the chairperson, the Librarian will select one replacement from the arbitrator list, and that person shall join with the remaining arbitrator to choose the replacement, who shall serve as chairperson.

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum.

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If the hearing is underway and two arbitrators are unable to continue

service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under Sec. 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

Sec. 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the Federal Register according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the Federal Register.

Sec. 251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under Sec. 251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Subpart B--Public Access to Copyright Arbitration Royalty Panel Meetings

Sec. 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in Sec. 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the Federal Register at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding.

In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a

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recorded vote of the panel and included in the announcement.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

Sec. 251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to be present does not include the right to participate or make comments.

Sec. 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close meetings, or any portion of a meeting, or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national

defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be a clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

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

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

Sec. 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the

decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the

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chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under Sec. 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

(c) Following such a vote, the following information shall be published in the Federal Register as soon as possible:

- (1) The vote of each arbitrator; and
- (2) The appropriate exemption under Sec. 251.13; and
- (3) A list of all persons expected to attend the meeting and their affiliation.

(d) The procedure for closed meetings in this section and in Sec. 251.15 shall not apply to the internal deliberations of arbitrators carried out in furtherance of their duties and obligations under this chapter.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

Sec. 251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of Sec. 251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least two years, or for at least one year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under Sec. 251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the panel and, if at that time the chairperson determines that they should be disclosed, he or she will resubmit the question to the CARP to gain authorization for their disclosure.

Sec. 251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned ``Request to Open" or ``Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her

name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Subpart C--Public Access to and Inspection of Records

Sec. 251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the Federal Register in accordance with Sec. 251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for inspection and copying at the address provided in Sec. 251.1 with the exception of:

- (1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;
- (2) Records exempted by statute from disclosure;

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(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, the Copyright Office, or the Library of Congress;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a CARP concerning the drafting of decisions, opinions, reports, and findings on any CARP matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators, or findings on any matter or proceeding conducted under 17 U.S.C. chapter 8;

(7) Offers of settlement that have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as "exempted" if a CARP or the Librarian of Congress finds compelling reasons for such action.

Sec. 251.22 Public access.

(a) Location of records. All of the following records relating to rate adjustment and distribution proceedings under this subchapter shall be maintained at the Copyright Office:

(1) Records required to be filed with the Copyright Office; or

(2) Records submitted to or produced by the Copyright Office or Library of Congress under 17 U.S.C. 801 and 802, or

(3) Records submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding. In the case of records submitted to or produced by a CARP that is currently conducting a proceeding, such records shall be maintained by the chairperson of that panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) Requesting information. Requests for information or access to records described in Sec. 251.21 shall be directed to the Copyright Office at the address listed in Sec. 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

(c) Fees. Fees for photocopies of CARP or Copyright Office records are the applicable Office charge. Fees for searching for records, certification of documents, and other costs incurred are as provided in 17 U.S.C. 705, 708.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

Sec. 251.23 FOIA and Privacy Act.

Freedom of Information Act and Privacy Act provisions applicable to CARP proceedings can be found in parts 203 and 204 of subchapter A of this chapter.

Subpart D--Standards of Conduct

Sec. 251.30 Basic obligations of arbitrators.

(a) Definitions. For purposes of these regulations, the following terms shall have the meanings given in this subsection:

(1) A "selected arbitrator" is a person named by the Librarian of Congress, or by other selected arbitrators, for service on a particular CARP, in accordance with Sec. 251.6 of these regulations;

(2) A "listed arbitrator" is a person named in the "arbitration list" published in accordance with Sec. 251.3 of these regulations.

(b) General principles applicable to arbitrators. Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall

apply these principles where applicable.

(1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.

(2) Arbitrators shall not hold financial interests that conflict with the

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conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in Sec. 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

Sec. 251.31 Financial interests.

(a) No selected arbitrator shall have a direct or indirect financial interest--

(1) In the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) In the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: Being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) "Direct or indirect financial interest" shall not include--

(1) Owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator,
or

(2) Receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interests of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

(1) The arbitrator's spouse;

(2) The arbitrator's minor child;

(3) The arbitrator's general partner, except that the personal financial holdings, including stock and bond investments, of such partner will not serve to disqualify the selected arbitrator; or

(4) An organization or entity for which the arbitrator serves as officer, director, trustee, general partner or employee.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

Sec. 251.32 Financial disclosure statement.

(a) Within 45 days of their nomination, each nominated arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to Sec. 251.31.

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except--

(1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or

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(2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:

(i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of Sec. 251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;

(ii) Such list shall be included in an order issued no later than the commencement of the 45-day precontroversy discovery period;

(iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.

(iv) Any party to the proceeding for which the listed arbitrator is

being considered may interpose within the 45-day period described in Sec. 251.45(b) an objection to that arbitrator being selected. If the objection is raised to a matter found to be within the scope of Sec. 251.31, the objection will serve automatically to disqualify the arbitrator. If the objection is raised to a matter found to be outside the scope of Sec. 251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are no changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of Sec. 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest--

(1) During the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) If the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

Sec. 251.33 Ex parte communications.

(a) Communications with Librarian or Register. No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This

prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) Selected arbitrators. No interested person shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange

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of pleasantries, shall not be deemed to constitute an ex parte communication.

(c) Listed arbitrators. No interested person shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as an arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) Library and Copyright Office personnel. No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) Outside contacts. The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) Responsibilities of recipients of communication. (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding:

- (i) All such written or recorded communications;
- (ii) Memoranda stating the substance of all such oral communications; and
- (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) Action by Librarian. When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed

in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

Sec. 251.34 Gifts and other things of monetary value.

(a) Selected arbitrators. From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) Listed arbitrators. No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except--

(1) A listed arbitrator may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed \$50 in a calendar year, or

(2) A listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift--

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or

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dependent relative because of that person's relationship to the arbitrator, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

Sec. 251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no

arbitrator shall--

(1) Engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) Accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) Accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments--

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

Sec. 251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

Sec. 251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that

the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner--

(1) Intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) Draft interlocutory rulings or draft decisions; or

(3) The CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

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Sec. 251.38 Billing and commitment to standards.

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under Sec. 251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, for travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under Sec. 251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress, arbitrators shall perform their own work, including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

Sec. 251.39 Remedies.

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following--

(a) In the case of a selected arbitrator,

(1) Removal of the arbitrator from the proceeding;

(2) Permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(3) Referral of the matter to the bar of which the arbitrator is a

member.

(b) In the case of a listed but not selected arbitrator--

(1) Permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(2) Referral of the matter to the bar of which the listed arbitrator is a member.

(c) In the case of an interested party or individual who engaged in the ethical violation--

(1) Referral of the matter to the bar or professional association of which the interested individual is a member;

(2) Barring the offending individual from current and/or future appearances before the CARP;

(3) Designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.

(d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

Subpart E--Procedures of Copyright Arbitration Royalty Panels

Sec. 251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under 17 U.S.C. 803 for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

Sec. 251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of Sec. 251.7. All such proceedings will be governed by the rules of this subpart.

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(b) During the 45-day period specified in Sec. 251.45(b)(1)(i) for distribution proceedings, or during the 45-day period specified in Sec. 251.45(b)(2)(i) for rate adjustment proceedings, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP decide the controversy or rate adjustment on

the basis of written pleadings. The petition may be granted if--

- (1) The controversy or rate adjustment, as appropriate, does not involve any genuine issue of material fact; or
- (2) All parties to the proceeding agree, in writing, that a grant of the petition is appropriate.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

Sec. 251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of Sec. 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to Sec. 251.7, the panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

Sec. 251.43 Written cases.

(a) All parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Office, and with other parties in the manner in which the Librarian of Congress shall direct in accordance with Sec. 251.45(b).

(b) The written direct case shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61

Sec. 251.44 Filing and service of written cases and pleadings.

(a) Filing of pleadings. In a royalty fee distribution proceeding or in a rate adjustment proceeding, the submitting party shall deliver an original and five copies of all filings to the Copyright Office at the address listed in Sec. 251.1, unless otherwise instructed by the Librarian of Congress or the CARP. The Copyright Office will make further distribution to the CARP, as necessary. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) Exhibits. All exhibits must be included with a party's case; however, in the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Librarian of Congress or the CARP may reduce the number of required copies. Nevertheless, a complete copy must still be submitted to the Copyright Office.

(c) English language translations. In all filings with a CARP or the Librarian of Congress, each submission that

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is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) Affidavits. The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) Subscription and verification. (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be signed by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) Service. The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the

proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP.

(g) Oppositions and replies. Except as otherwise provided in this part or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within seven business days of the filing of the motion, and replies to oppositions shall be filed within five business days of the filing of the opposition. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996; 65 FR 39820, June 28, 2000]

Sec. 251.45 Discovery and prehearing motions.

(a) Request for comment, notice of intention to participate. In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the Federal Register a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. In the case of a rate adjustment proceeding, the Librarian of Congress shall, after receiving a petition for rate adjustment filed under Sec. 251.62, or, in the case of noncommercial educational broadcasting and satellite carrier, prior to the commencement of proceedings, publish in the Federal Register a notice requesting interested parties to comment on the petition for rate adjustment. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

(b) Precontroversy discovery, filing of written cases, scheduling.

(1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and

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notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the

45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under Sec. 251.41(b) and objections to arbitrators appearing on the arbitrator list under Sec. 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to Sec. 251.72, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under Sec. 251.41(b) and objections to arbitrators appearing on the arbitrator list under Sec. 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to Sec. 251.64, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(c) Discovery and motions filed with a Copyright Arbitration Royalty Panel. (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of written direct and rebuttal cases with it in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of written cases with a CARP, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) Amended filings and discovery. In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996]

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Sec. 251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the CARP's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a CARP, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

Sec. 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party

may present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the CARP expands the witness's testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the hearing without leave from the CARP. See Sec. 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the panel sustains an objection; no separate motion will be required.

(h) If the panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The CARP shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this

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subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the CARP and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the

panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(1) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination of any given witness. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination of any given witness, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 63 FR 30635, June 5, 1998]

Sec. 251.48 Rules of evidence.

(a) Admissibility. In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) Documentary evidence. Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office. If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) Public documents. If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned

corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) Introduction of studies and analyses. If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and

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the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) Statistical studies. Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) Sample surveys. (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of the characteristics which were measured and counted.

(2) Econometric investigations. (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) Experimental analysis. (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) Studies involving statistical methodology. (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 63 FR 30635, June 5, 1998]

Sec. 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with Sec. 251.22.

Sec. 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, that no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See Sec. 251.7.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

Sec. 251.51 Closing the record.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the panel may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume,

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except upon ten days' notice to all parties.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

Sec. 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a

waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed findings submitted by someone other than a party in a proceeding shall be restricted to those issues specifically affecting that person.

(d) Proposed conclusions shall be stated separately.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

Sec. 251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law and any replies thereto specified in Sec. 251.52, and not later than 180 days from publication in the Federal Register of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the panel found relevant to its determination.

(b) The determination of the panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinion shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

Sec. 251.54 Assessment of costs of arbitration panels.

(a) The ordinary and necessary costs of an arbitrator shall be assessed, in accordance with Sec. 251.38, as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution. These costs shall be considered reasonable costs incurred by the Librarian of Congress and the Copyright Office. Such costs shall be deducted from the royalty fees which have been deposited and collected under title 17 of the United States Code and which are the subject of the distribution proceeding.

(b) Each arbitrator shall itemize his or her expenses on the statement of cost in a format approved by the General Counsel and shall

specify the name and address to whom payment should be made. In the case of a rate adjustment proceeding, each statement of cost shall specify each party's share of the total cost and the amount owed by that party to each arbitrator, or alternatively, reflect the method of payment agreed upon by the parties and the arbitrators.

(c) The statements of cost shall be sent to the Library of Congress no more frequently than once a month.

(1) In the case of a distribution proceeding, the statements of cost shall be sent to the Accounting Operations Section, Financial Services Directorate, Library of Congress, 101 Independence

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Avenue, SE, Washington, DC 20540-9112, and a copy of the statements of cost shall be submitted to the Copyright Office as directed in paragraph (c)(2) of this section.

(2) In the case of a rate adjustment proceeding, the statements of cost shall be sent to the CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024, or hand delivered to the Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20540.

(d) In the case of a rate adjustment proceeding, all parties to the proceeding shall have 30 days from receipt of a proper statement of cost in which to tender payment to the arbitrators, unless otherwise directed by the panel. Payment should be in the form of a money order, check, bank draft, or electronic fund transfer.

(e) In the case of a distribution proceeding, the Library of Congress shall reimburse the arbitrators from the royalty fees collected under title 17 of the United States Code which are the subject of the CARP proceeding. Payment of approved costs shall be made within 30 days of the receipt of a proper statement of cost in the form of an electronic fund transfer in accordance with the regulations of the Library of Congress.

[64 FR 25201, May 11, 1999, as amended at 64 FR 36575, July 7, 1999]

Sec. 251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

Sec. 251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see Sec. 251.55, but within 90 days from receipt of the report of the determination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the Librarian shall have an additional 30 days to issue the order which shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the Federal Register.

[59 FR 23981, May 9, 1994, as amended at 64 FR 36576, July 7, 1999]

Sec. 251.57 Effective date of order.

An order of determination issued by the Librarian under Sec. 251.56 shall become effective 30 days following its publication in the Federal Register, unless an appeal has been filed pursuant to Sec. 251.58 and notice of the appeal has been served on all parties to the proceeding.

Sec. 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under Sec. 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the Federal Register.

(b) If no appeal is brought within the 30-day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 112, 114, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing

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statements of account and royalty fees by those sections.

[59 FR 23981, May 9, 1994, as amended at 61 FR 37215, July 17, 1996; 63 FR 65556, Nov. 27, 1998; 64 FR 36576, July 7, 1999]

Subpart F--Rate Adjustment Proceedings

Sec. 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), the making of ephemeral recordings (17 U.S.C. 112), certain digital audio transmissions (17 U.S.C. 114), the manufacture and distribution of phonorecords, including digital phonorecord deliveries (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), noncommercial educational broadcasting (17 U.S.C. 118) and satellite carriers (17 U.S.C. 119). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 37215, July 17, 1996; 63 FR 30635, June 5, 1998; 63 FR 65556, Nov. 27, 1998]

Sec. 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Ephemeral recordings: During a 60-day period prescribed by the Librarian in 1999, 2000, and at 2-year intervals thereafter, or as otherwise agreed to by the parties.

(3) Digital audio transmissions: For preexisting digital subscription transmission services and preexisting satellite digital audio radio services:

(i) During a 60-day period commencing on July 1, 2001 and at 5-year intervals thereafter, or

(ii) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of subscription digital audio transmission service; and for an eligible nonsubscription service or a new subscription service:

(A) During a 60-day period prescribed by the Librarian in 1999,

(B) During a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter,

(C) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of eligible nonsubscription service or new subscription service, or

(D) As otherwise agreed to by the parties.

(4) Phonorecords: During 1997 and each subsequent tenth calendar year.

(5) Digital phonorecord deliveries: During 1997 and each subsequent fifth calendar year, or as otherwise agreed to by the parties.

(6) Coin-operated phonorecord players (jukeboxes): Within one year

of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the Federal Register on June 30, 1997, and at five year intervals thereafter.

(d) In the case of the satellite carrier compulsory license, rate adjustment proceedings shall commence on January 1, 1997, in accordance with 17 U.S.C. 119(c)(3)(A), for satellite carriers who

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are not parties to a voluntary agreement filed with the Copyright Office in accordance with 17 U.S.C. 119(c)(2).

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 37215, July 17, 1996; 63 FR 65556, Nov. 27, 1998]

Sec. 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

[59 FR 23981, May 9, 1994, as amended at 61 FR 37216, July 17, 1996; 63 FR 65557, Nov. 27, 1998]

Sec. 251.63 Consideration of petition; settlements.

(a) To allow time for the parties to settle their differences concerning cable, phonorecord, and jukebox rate adjustments, the Librarian of Congress shall, after the filing of the petition under Sec. 251.62 and before the 45-day period specified in

Sec. 251.45(b)(2)(i), designate a 30-day period for negotiation of a settlement. The Librarian shall cause notice of the dates for that period to be published in the Federal Register.

(b) In the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

[59 FR 63042, Dec. 7, 1994, as amended at 61 FR 37216, July 17, 1996; 61 FR 63718, Dec. 2, 1996]

Sec. 251.64 Disposition of petition; initiation of arbitration proceeding.

After the end of the 45-day precontroversy discovery period, and after the Librarian has ruled on all motions and objections filed under Sec. 251.45, the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the Federal Register a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting and the satellite carrier compulsory license in accordance with 17 U.S.C. 118 and 119, respectively. Such notice shall, to the extent feasible, describe the nature, general structure, and schedule of the proceeding.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 65 FR 39820, June 28, 2000]

Sec. 251.65 Deduction of costs of rate adjustment proceedings.

In accordance with 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

[59 FR 63042, Dec. 7, 1994]

Subpart G--Royalty Fee Distribution Proceedings

Sec. 251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of

Copyrights for cable (17 U.S.C. 111), satellite carrier (17 U.S.C.

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119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

Sec. 251.71 Commencement of proceedings.

(a) Cable. In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) Satellite carriers. In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) Digital audio recording devices and media. In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

Sec. 251.72 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the Federal Register a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

[59 FR 23981, May 9, 1994. Redesignated at 59 FR 63042, Dec. 7, 1994]

Sec. 251.73 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceeding, from the relevant royalty pool.

[59 FR 23981, May 9, 1994. Redesignated at 59 FR 63042, Dec. 7, 1994]

Canada

Copyright Act part VII Copyright Board and Collective Administration of Copyright

Copyright Board

66. (1) There is hereby established a Board, to be known as the Copyright Board, consisting of not more than five members, including a chairman and a vice-chairman, to be appointed by the Governor in Council.

(2) The members of the Board shall be appointed to serve either full-time or part-time.

(3) The chairman must be a judge, either sitting or retired, of a superior, county or district court.

(4) Each member of the Board shall hold office during good behaviour for a term not exceeding five years, but may be removed at any time by the Governor in Council for cause.

(5) A member of the Board is eligible to be re-appointed once only.

(6) A member of the Board shall not be employed in the Public Service within the meaning of the *Public Service Staff Relations Act* during the member's term of office.

(7) A full-time member of the Board, other than the chairman, shall be deemed to be employed in

(a) the Public Service for the purposes of the *Public Service Superannuation Act*; and

(b) the public service of Canada for the purposes of any regulations made pursuant to section 9 of the *Aeronautics Act*.

R.S., 1985, c. C-42, s. 66; R.S., 1985, c. 10 (1st Supp.), s. 1, c. 10 (4th Supp.), s. 12.

66.1 (1) The chairman shall direct the work of the Board and apportion its work among the members of the Board.

(2) If the chairman is absent or incapacitated or if the office of chairman is vacant, the vice-chairman has all the powers and functions of the chairman during the absence, incapacity or vacancy.

(3) The vice-chairman is the chief executive officer of the Board and has supervision over and direction of the Board and its staff.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.2 The members of the Board shall be paid such remuneration as may be fixed by the Governor in Council and are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties under this Act while absent from their ordinary place of residence.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.3 (1) A member of the Board shall not, directly or indirectly, engage in any activity, have any interest in a business or accept or engage in any office or employment that is inconsistent with the member's duties.

(2) Where a member of the Board becomes aware that he is in a conflict of interest contrary to subsection (1), the member shall, within one hundred and twenty days, terminate the conflict or resign.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.4 (1) Such officers and employees as are necessary for the proper conduct of the work of the Board shall be appointed in accordance with the *Public Service Employment Act*.

(2) The officers and employees referred to in subsection (1) shall be deemed to be employed in the Public Service for the purposes of the *Public Service Superannuation Act*.

(3) The Board may engage on a temporary basis the services of persons having technical or specialized knowledge to advise and assist in the performance of its duties and the Board may, in accordance with Treasury Board directives, fix and pay the remuneration and expenses of those persons.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.5 (1) A member of the Board whose term expires may conclude the matters that the member has begun to consider.

(2) Matters before the Board shall be decided by a majority of the members of the Board and the presiding member shall have a second vote in the case of a tie.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.51 The Board may, on application, make an interim decision.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.52 A decision of the Board respecting royalties or their related terms and conditions that is made under subsection 68(3), sections 68.1 or 70.15 or or subsections 70.2(2), 70.6(1), 73(1) or 83(8) may, on application, be varied by the Board if, in its opinion, there has been a material change in circumstances since the decision was made.

R.S., 1985, c. 10 (4th Supp.), s. 12; 1988, c. 65, s. 64; 1997, c. 24, s. 42.

66.6 (1) The Board may, with the approval of the Governor in Council, make regulations governing

(a) the practice and procedure in respect of the Board's hearings, including the number of members of the Board that constitutes a quorum;

(b) the time and manner in which applications and notices must be made or given;

(c) the establishment of forms for the making or giving of applications and notices; and

(d) the carrying out of the work of the Board, the management of its internal affairs and the duties of its officers and employees.

(2) A copy of each regulation that the Board proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.

(3) No proposed regulation that has been published pursuant to subsection (2) need again be published under that subsection, whether or not it has been altered as a result of representations made with respect thereto.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.7 (1) The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its decisions and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

(2) Any decision of the Board may, for the purposes of its enforcement, be made an order of the Federal Court or of any superior court and is enforceable in the same manner as an order thereof.

(3) To make a decision of the Board an order of a court, the usual practice and procedure of the court in such matters may be followed or a certified copy of the decision may be filed with the registrar of the court and thereupon the decision becomes an order of the court.

(4) Where a decision of the Board that has been made an order of a court is varied by a subsequent decision of the Board, the order of the court shall be deemed to have been varied accordingly and the subsequent decision may, in the same manner, be made an order of the court.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.71 Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board may at any time cause to be distributed or published, in any manner and on any terms and conditions that it sees fit, any notice that it sees fit to be distributed or published.

1997, c. 24, s. 43.

66.8 The Board shall conduct such studies with respect to the exercise of its powers as are requested by the Minister.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.9 (1) The Board shall, not later than August 31 in each year, submit to the Governor in Council through the Minister an annual report on the Board's activities for the preceding year describing briefly the applications made to the Board, the Board's decisions and any other matter that the Board considers relevant.

(2) The Minister shall cause a copy of each annual report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.91 The Governor in Council may make regulations issuing policy directions to the Board and establishing general criteria to be applied by the Board or to which the Board must have regard

(a) in establishing fair and equitable royalties to be paid pursuant to this Act; and

(b) in rendering its decisions in any matter within its jurisdiction.

1997, c. 24, s. 44.

Collective Administration of Performing Rights and of Communication Rights

67. Each collective society that carries on

(a) the business of granting licences or collecting royalties for the performance in public of musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works, or

(b) the business of granting licences or collecting royalties for the communication to the public by telecommunication of musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works, other than the communication of musical works or dramatico-musical works in a manner described in subsection 31(2),

must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances or sound recordings, that are in current use.

R.S., 1985, c. C-42, s. 67; R.S., 1985, c. 10 (1st Supp.), s. 1, c. 10 (4th Supp.), s. 12; 1993, c. 23, s. 3; 1997, c. 24, s. 45.

67.1 (1) Each collective society referred to in section 67 shall, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 68(3) expires, file with the Board a proposed tariff, in both official languages, of all royalties to be collected by the collective society.

(2) A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 68(3) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it, on or before the March 31 immediately before its proposed effective date.

(3) A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

(4) Where a proposed tariff is not filed with respect to the work, performer's performance or sound recording in question, no action may be commenced, without the written consent of the Minister, for

(a) the infringement of the rights, referred to in section 3, to perform in public or to communicate to the public by telecommunication, the work, performer's performance or sound recording; or

(b) the recovery of royalties referred to in section 19.

(5) As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, prospective users or their representatives may file written objections to the tariff with the Board.

R.S., 1985, c. 10 (4th Supp.), s. 12; 1997, c. 24, s. 45.

67.2 and **67.3** [Repealed, 1997, c. 24, s. 45]

68. (1) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection 67.1(5) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

(2) In examining a proposed tariff for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances, the Board

(a) shall ensure that

(i) the tariff applies in respect of performer's performances and sound recordings only in the situations referred to in subsections 20(1) and (2),

(ii) the tariff does not, because of linguistic and content requirements of Canada's broadcasting policy set out in section 3 of the *Broadcasting Act*, place some users that are subject to that Act at a greater financial disadvantage than others, and

(iii) the payment of royalties by users pursuant to section 19 will be made in a single payment; and

(b) may take into account any factor that it considers appropriate.

(3) The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to

(a) any objections to the tariffs under subsection 67.1(5); and

(b) the matters referred to in subsection (2).

(4) The Board shall

(a) publish the approved tariffs in the *Canada Gazette* as soon as practicable; and

(b) send a copy of each approved tariff, together with the reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

R.S., 1985, c. C-42, s. 68; R.S., 1985, c. 10 (4th Supp.), s. 13; 1993, c. 23, s. 5; 1997, c. 24, s. 45.

68.1 (1) Notwithstanding the tariffs approved by the Board under subsection 68(3) for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances,

(a) wireless transmission systems, except community systems and public transmission systems, shall pay royalties as follows:

(i) in respect of each year, \$100 on the first 1.25 million dollars of annual advertising revenues, and

- (ii) on any portion of annual advertising revenues exceeding 1.25 million dollars,
 - (A) for the first year following the coming into force of this section, thirty-three and one third per cent of the royalties set out in the approved tariff for that year,
 - (B) for the second year following the coming into force of this section, sixty-six and two thirds per cent of the royalties set out in the approved tariff for that year, and
 - (C) for the third year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year;

(b) community systems shall pay royalties of \$100 in respect of each year; and

(c) public transmission systems shall pay royalties, in respect of each of the first three years following the coming into force of this section, as follows:

(i) for the first year following the coming into force of this section, thirty-three and one third per cent of the royalties set out in the approved tariff for that year,

(ii) for the second year following the coming into force of this section, sixty-six and two thirds per cent of the royalties set out in the approved tariff for that year, and

(iii) for the third year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year.

(2) The payment of the royalties set out in subsection (1) fully discharges all liabilities of the system in question in respect of the approved tariffs.

(3) The Board may, by regulation, define "advertising revenues" for the purposes of subsection (1).

(4) The Board shall, in certifying a tariff as approved under subsection 68(3), ensure that there is a preferential royalty rate for small cable transmission systems.

(5) The Governor in Council may make regulations defining "small cable transmission system", "community system", "public transmission system" and "wireless transmission system" for the purposes of this section.

1997, c. 24, s. 45.

68.2 (1) Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect the royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

(2) No proceedings may be brought for

(a) the infringement of the right to perform in public or the right to communicate to the public by telecommunication, referred to in section 3, or

(b) the recovery of royalties referred to in section 19

against a person who has paid or offered to pay the royalties specified in an approved tariff.

(3) Where a collective society files a proposed tariff in accordance with subsection 67.1(1),

(a) any person entitled to perform in public or communicate to the public by telecommunication those works, performer's performances or sound recordings pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and

(b) the collective society may collect the royalties in accordance with the previous tariff,

until the proposed tariff is approved.

1997, c. 24, s. 45.

Public Performances in Places Other Than Theatres

69. (1) [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 14]

(2) In respect of public performances by means of any radio receiving set in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made, no royalties shall be collectable from the owner or user of the radio receiving set, but the Board shall, in so far as possible, provide for the collection in advance from radio broadcasting stations of royalties appropriate to the conditions produced by the provisions of this subsection and shall fix the amount of the same.

(3) In fixing royalties pursuant to subsection (2), the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performing right concerned or his agents, in consequence of subsection (2).

(4) [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 14]

R.S., 1985, c. C-42, s. 69; R.S., 1985, c. 10 (4th Supp.), s. 14; 1993, c. 44, s. 73; 1997, c. 24, s. 52(F).

70. [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 15]

Collective Administration in Relation to Rights under Sections 3, 15, 18 and 21
Collective Societies

70.1 Sections 70.11 to 70.6 apply in respect of a collective society that operates

(a) a licensing scheme, applicable in relation to a repertoire of works of more than one author, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 3 in respect of those works;

(a.1) a licensing scheme, applicable in relation to a repertoire of performer's performances of more than one performer, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 15 in respect of those performer's performances;

(b) a licensing scheme, applicable in relation to a repertoire of sound recordings of more than one maker, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 18 in respect of those sound recordings; or

(c) a licensing scheme, applicable in relation to a repertoire of communication signals of more than one broadcaster, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 21 in respect of those communication signals.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 46.

70.11 A collective society referred to in section 70.1 must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances, sound recordings or communication signals.

1997, c. 24, s. 46.

70.12 A collective society may, for the purpose of setting out by licence the royalties and terms and conditions relating to classes of uses,

(a) file a proposed tariff with the Board; or

(b) enter into agreements with users.

1997, c. 24, s. 46.

Tariffs

70.13 (1) Each collective society referred to in section 70.1 may, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 70.15(1) expires, file with the Board a proposed tariff, in both official languages, of royalties to be collected by the collective society for issuing licences.

(2) A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 70.15(1) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it for issuing licences, on or before the March 31 immediately before its proposed effective date.

1997, c. 24, s. 46.

70.14 Where a proposed tariff is filed under section 70.13, subsections 67.1(3) and (5) and subsection 68(1) apply, with such modifications as the circumstances require.

1997, c. 24, s. 46.

70.15 (1) The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to any objections to the tariffs.

(2) Where a tariff is approved under subsection (1), subsections 68(4) and 68.2(1) apply, with such modifications as the circumstances require.

1997, c. 24, s. 46.

70.16 Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board shall notify persons affected by a proposed tariff, by

(a) distributing or publishing a notice, or

(b) directing another person or body to distribute or publish a notice,

in such manner and on such terms and conditions as the Board sees fit.

1997, c. 24, s. 46.

70.17 Subject to section 70.19, no proceedings may be brought for the infringement of a right referred to in section 3, 15, 18 or 21 against a person who has paid or offered to pay the royalties specified in an approved tariff.

1997, c. 24, s. 46.

70.18 Subject to section 70.19, where a collective society files a proposed tariff in accordance with section 70.13,

(a) any person authorized by the collective society to do an act referred to in section 3, 15, 18 or 21, as the case may be, pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and

(b) the collective society may collect the royalties in accordance with the previous tariff,

until the proposed tariff is approved.

1997, c. 24, s. 46.

70.19 If there is an agreement mentioned in paragraph 70.12(b), sections 70.17 and 70.18 do not apply in respect of the matters covered by the agreement.

1997, c. 24, s. 46.

70.191 An approved tariff does not apply where there is an agreement between a collective society and a person authorized to do an act mentioned in section 3, 15, 18 or 21, as the case may be, if the agreement is in effect during the period covered by the approved tariff.

1997, c. 24, s. 46.

Fixing of Royalties in Individual Cases

70.2 (1) Where a collective society and any person not otherwise authorized to do an act mentioned in section 3, 15, 18 or 21, as the case may be, in respect of the works, sound recordings or

communication signals included in the collective society's repertoire are unable to agree on the royalties to be paid for the right to do the act or on their related terms and conditions, either of them or a representative of either may, after giving notice to the other, apply to the Board to fix the royalties and their related terms and conditions.

(2) The Board may fix the royalties and their related terms and conditions in respect of a licence during such period of not less than one year as the Board may specify and, as soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the collective society and the person concerned or that person's representative.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 46.

70.3 (1) The Board shall not proceed with an application under section 70.2 where a notice is filed with the Board that an agreement touching the matters in issue has been reached.

(2) An agreement referred to in subsection (1) is effective during the year following the expiration of the previous agreement, if any, or of the last period specified under subsection 70.2(2).

R.S., 1985, c. 10 (4th Supp.), s. 16.

70.4 Where any royalties are fixed for a period pursuant to subsection 70.2(2), the person concerned may, during the period, subject to the related terms and conditions fixed by the Board and to the terms and conditions set out in the scheme and on paying or offering to pay the royalties, do the act with respect to which the royalties and their related terms and conditions are fixed and the collective society may, without prejudice to any other remedies available to it, collect the royalties or, in default of their payment, recover them in a court of competent jurisdiction.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 47.

Examination of Agreements

70.5 (1) For the purposes of this section and section 70.6, "Commissioner" means the Commissioner of Competition appointed under the *Competition Act*.

(2) Where a collective society concludes an agreement to grant a licence authorizing a person to do an act mentioned in section 3, 15, 18 or 21, as the case may be, the collective society or the person may file a copy of the agreement with the Board within fifteen days after it is concluded.

(3) Section 45 of the *Competition Act* does not apply in respect of any royalties or related terms and conditions arising under an agreement filed in accordance with subsection (2).

(4) The Commissioner may have access to the copy of an agreement filed in accordance with subsection (2).

(5) Where the Commissioner considers that an agreement filed in accordance with subsection (2) is contrary to the public interest, the Commissioner may, after advising the parties concerned, request the Board to examine the agreement.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 48; 1999, c. 2, ss. 45, 46.

70.6 (1) The Board shall, as soon as practicable, consider a request by the Commissioner to examine an agreement and the Board may, after giving the Commissioner and the parties concerned an opportunity to present their arguments, alter the royalties and any related terms and conditions arising under the agreement, in which case section 70.4 applies with such modifications as the circumstances require.

(2) As soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the parties concerned and to the Commissioner.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 49(F); 1999, c. 2, s. 46.

70.61 to 70.8 [Repealed, 1997, c. 24, s. 50]

Royalties in Particular Cases

71. (1) Each collective society that carries on the business of collecting royalties referred to in subsection 29.6(2), 29.7(2) or (3) or paragraph 31(2)(d) shall file with the Board a proposed tariff, but no other person may file any such tariff.

(2) A proposed tariff must be

(a) in both official languages; and

(b) filed on or before the March 31 immediately before the date that the approved tariff ceases to be effective.

(3) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph 73(1)(d) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

(4) A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

R.S., 1985, c. C-42, s. 71; 1997, c. 24, s. 50.

72. (1) As soon as practicable after the receipt of a proposed tariff filed pursuant to section 71, the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, educational institutions and prospective retransmitters, or their representatives, may file written objections to the tariff with the Board.

(2) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (1) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

1997, c. 24, s. 50; 1999, c. 31, s. 61.

73. (1) On the conclusion of its consideration of proposed tariffs, the Board shall

(a) establish

(i) a manner of determining the royalties to be paid by educational institutions and retransmitters, and

(ii) such terms and conditions related to those royalties as the Board considers appropriate;

(b) determine the portion of the royalties referred to in paragraph (a) that is to be paid to each collective society;

(c) vary the tariffs accordingly; and

(d) certify the tariffs as the approved tariffs, whereupon the tariffs become for the purposes of this Act the approved tariffs.

(2) For greater certainty, the Board, in establishing a manner of determining royalties under paragraph (1)(a) or in apportioning them under paragraph (1)(b), may not discriminate between owners of copyright on the ground of their nationality or residence.

(3) The Board shall publish the approved tariffs in the *Canada Gazette* as soon as practicable and send a copy of each approved tariff, together with the reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

1997, c. 24, s. 50; 1999, c. 31, s. 62.

74. (1) The Board shall, in establishing a manner of determining royalties under paragraph 73(1)(a), ensure that there is a preferential rate for small retransmission systems.

(2) The Governor in Council may make regulations defining "small retransmission systems" for the purpose of subsection (1).

1997, c. 24, s. 50.

75. Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect the royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

1997, c. 24, s. 50.

76. (1) An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in paragraph 31(2)(d) is, if the work is communicated to the public by telecommunication during a period when an approved tariff that is applicable to that kind of work is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(2) An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in subsection 29.6(2) or 29.7(2) or (3) is, if such royalties are payable during a period when an approved tariff that is applicable to that kind of work or other subject-matter is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(3) The entitlement referred to in subsections (1) and (2) is the only remedy of the owner of the copyright for the payment of royalties for the communication, making of the copy or sound recording or performance in public, as the case may be.

(4) The Board may, for the purposes of this section,

(a) require a collective society to file with the Board information relating to payments of royalties collected by it to the persons who have authorized it to collect those royalties; and

(b) by regulation, establish periods of not less than twelve months within which the entitlements referred to in subsections (1) and (2) must be exercised, in the case of royalties referred to in

(i) paragraph 29.6(2)(a), beginning on the expiration of the year during which no royalties are payable under that paragraph,

(ii) paragraph 29.6(2)(b), beginning on the performance in public,

(iii) subsection 29.7(2), beginning on the making of the copy,

(iv) subsection 29.7(3), beginning on the performance in public, or

(v) paragraph 31(2)(d), beginning on the communication to the public by telecommunication.

1997, c. 24, s. 50.

Owners Who Cannot be Located

77. (1) Where, on application to the Board by a person who wishes to obtain a licence to use

(a) a published work,

(b) a fixation of a performer's performance,

(c) a published sound recording, or

(d) a fixation of a communication signal

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be.

(2) A licence issued under subsection (1) is non-exclusive and is subject to such terms and conditions as the Board may establish.

(3) The owner of a copyright may, not later than five years after the expiration of a licence issued pursuant to subsection (1) in respect of the copyright, collect the royalties fixed in the licence or, in default of their payment, commence an action to recover them in a court of competent jurisdiction.

(4) The Copyright Board may make regulations governing the issuance of licences under subsection (1).

1997, c. 24, s. 50.

Compensation for Acts Done Before Recognition of Copyright or Moral Rights

78. (1) Subject to subsection (2), for the purposes of subsections 32.4(2), 32.5(2) and 33(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for the enforcement of a right mentioned in subsection 32.4(3) or 32.5(3).

(2) The Board shall not

(a) proceed with an application under subsection (1) where a notice is filed with the Board that an agreement regarding the matters in issue has been reached; or

(b) where a court action between the parties for enforcement of a right referred to in subsection 32.4(3) or 32.5(3), as the case may be, has been commenced, continue with an application under subsection (1) until the court action is finally concluded.

(3) Where the Board proceeds with an application under subsection (1), it may, for the purpose of avoiding serious prejudice to any party, make an interim order requiring a party to refrain from doing any act described in the order until the determination of compensation is made under subsection (1).

1997, c. 24, s. 50.

**PART VIII
PRIVATE COPYING**

Interpretation

79. In this Part,

"audio recording medium" means a recording medium, regardless of its material form, onto which a sound recording may be reproduced and that is of a kind ordinarily used by individual consumers for that purpose, excluding any prescribed kind of recording medium;

"blank audio recording medium" means

(a) an audio recording medium onto which no sounds have ever been fixed, and

(b) any other prescribed audio recording medium;

"collecting body" means the collective society, or other society, association or corporation, that is designated as the collecting body under subsection 83(8);

"eligible author" means an author of a musical work, whether created before or after the coming into force of this Part, that is embodied in a sound recording, whether made before or after the coming into force of this Part, if copyright subsists in Canada in that musical work;

"eligible maker" means a maker of a sound recording that embodies a musical work, whether the first fixation of the sound recording occurred before or after the coming into force of this Part, if

(a) both the following two conditions are met:

(i) the maker, at the date of that first fixation, if a corporation, had its headquarters in Canada or, if a natural person, was a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, and

(ii) copyright subsists in Canada in the sound recording, or

(b) the maker, at the date of that first fixation, if a corporation, had its headquarters in a country referred to in a statement published under section 85 or, if a natural person, was a citizen, subject or permanent resident of such a country;

"eligible performer" means the performer of a performer's performance of a musical work, whether it took place before or after the coming into force of this Part, if the performer's performance is embodied in a sound recording and

(a) both the following two conditions are met:

(i) the performer was, at the date of the first fixation of the sound recording, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, and

(ii) copyright subsists in Canada in the performer's performance, or

(b) the performer was, at the date of the first fixation of the sound recording, a citizen, subject or permanent resident of a country referred to in a statement published under section 85;

"prescribed" means prescribed by regulations made under this Part.
1997, c. 24, s. 50.

Copying for Private Use

80. (1) Subject to subsection (2), the act of reproducing all or any substantial part of

(a) a musical work embodied in a sound recording,

(b) a performer's performance of a musical work embodied in a sound recording, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied

onto an audio recording medium for the private use of the person who makes the copy does not constitute an infringement of the copyright in the musical work, the performer's performance or the sound recording.

(2) Subsection (1) does not apply if the act described in that subsection is done for the purpose of doing any of the following in relation to any of the things referred to in paragraphs (1)(a) to (c):

(a) selling or renting out, or by way of trade exposing or offering for sale or rental;

(b) distributing, whether or not for the purpose of trade;

(c) communicating to the public by telecommunication; or

(d) performing, or causing to be performed, in public.

1997, c. 24, s. 50.

Right of Remuneration

81. (1) Subject to and in accordance with this Part, eligible authors, eligible performers and eligible makers have a right to receive remuneration from manufacturers and importers of blank audio recording media in respect of the reproduction for private use of

(a) a musical work embodied in a sound recording;

(b) a performer's performance of a musical work embodied in a sound recording; or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied.

(2) Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of the rights conferred by subsection (1) on eligible authors, performers and makers.

1997, c. 24, s. 50.

Levy on Blank Audio Recording Media

82. (1) Every person who, for the purpose of trade, manufactures a blank audio recording medium in Canada or imports a blank audio recording medium into Canada

(a) is liable, subject to subsection (2) and section 86, to pay a levy to the collecting body on selling or otherwise disposing of those blank audio recording media in Canada; and

(b) shall, in accordance with subsection 83(8), keep statements of account of the activities referred to in paragraph (a), as well as of exports of those blank audio recording media, and shall furnish those statements to the collecting body.

(2) No levy is payable where it is a term of the sale or other disposition of the blank audio recording medium that the medium is to be exported from Canada, and it is exported from Canada.

1997, c. 24, s. 50.

83. (1) Subject to subsection (14), each collective society may file with the Board a proposed tariff for the benefit of those eligible authors, eligible performers and eligible makers who, by assignment, grant of licence, appointment of the society as their agent or otherwise, authorize it to act on their behalf for that purpose, but no person other than a collective society may file any such tariff.

(2) Without limiting the generality of what may be included in a proposed tariff, the tariff may include a suggestion as to whom the Board should designate under paragraph (8)(d) as the collecting body.

(3) Proposed tariffs must be in both official languages and must be filed on or before the March 31 immediately before the date when the approved tariffs cease to be effective.

(4) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph (8)(c) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

(5) A proposed tariff must provide that the levies are to be effective for periods of one or more calendar years.

(6) As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, any person may file written objections to the tariff with the Board.

(7) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (6) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

(8) On the conclusion of its consideration of the proposed tariff, the Board shall

(a) establish, in accordance with subsection (9),

(i) the manner of determining the levies, and

(ii) such terms and conditions related to those levies as the Board considers appropriate, including, without limiting the generality of the foregoing, the form, content and frequency of the statements of account mentioned in subsection 82(1), measures for the protection of confidential information contained in those statements, and the times at which the levies are payable,

(b) vary the tariff accordingly,

(c) certify the tariff as the approved tariff, whereupon that tariff becomes for the purposes of this Part the approved tariff, and

(d) designate as the collecting body the collective society or other society, association or corporation that, in the Board's opinion, will best fulfil the objects of sections 82, 84 and 86,

but the Board is not obligated to exercise its power under paragraph (d) if it has previously done so, and a designation under that paragraph remains in effect until the Board makes another designation, which it may do at any time whatsoever, on application.

(9) In exercising its power under paragraph (8)(a), the Board shall satisfy itself that the levies are fair and equitable, having regard to any prescribed criteria.

(10) The Board shall publish the approved tariffs in the *Canada Gazette* as soon as practicable and shall send a copy of each approved tariff, together with the reasons for the Board's decision, to the collecting body, to each collective society that filed a proposed tariff, and to any person who filed an objection.

(11) An eligible author, eligible performer or eligible maker who does not authorize a collective society to file a proposed tariff under subsection (1) is entitled, in relation to

(a) a musical work,

(b) a performer's performance of a musical work, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied,

as the case may be, to be paid by the collective society that is designated by the Board, of the Board's own motion or on application, the remuneration referred to in section 81 if such remuneration is payable during a period when an approved tariff that is applicable to that kind of work, performer's performance or sound recording is effective, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(12) The entitlement referred to in subsection (11) is the only remedy of the eligible author, eligible performer or eligible maker referred to in that subsection in respect of the reproducing of sound recordings for private use.

(13) The Board may, for the purposes of subsections (11) and (12),

(a) require a collective society to file with the Board information relating to payments of moneys received by the society pursuant to section 84 to the persons who have authorized it to file a tariff under subsection (1); and

(b) by regulation, establish the periods, which shall not be less than twelve months, beginning when the applicable approved tariff ceases to be effective, within which the entitlement referred to in subsection (11) must be exercised.

(14) Where all the collective societies that intend to file a proposed tariff authorize a particular person or body to file a single proposed tariff on their behalf, that person or body may do so, and in that case this section applies, with such modifications as the circumstances require, in respect of that proposed tariff.

1997, c. 24, s. 50.

Distribution of Levies Paid

84. As soon as practicable after receiving the levies paid to it, the collecting body shall distribute the levies to the collective societies representing eligible authors, eligible performers and eligible makers, in the proportions fixed by the Board.

1997, c. 24, s. 50.

85. (1) Where the Minister is of the opinion that another country grants or has undertaken to grant to performers and makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*,

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(2) Where the Minister is of the opinion that another country neither grants nor has undertaken to grant to performers or makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*,

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers or makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(3) Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

(a) applies in respect of performers or makers of sound recordings covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and

(b) applies in respect of a country covered by that statement, as if that country were Canada.

(4) Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3).
1997, c. 24, s. 50.

Exemption from Levy

86. (1) No levy is payable under this Part where the manufacturer or importer of a blank audio recording medium sells or otherwise disposes of it to a society, association or corporation that represents persons with a perceptual disability.

(2) Where a society, association or corporation referred to in subsection (1)

(a) purchases a blank audio recording medium in Canada from a person other than the manufacturer or importer, and

(b) provides the collecting body with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made,

the collecting body is liable to pay forthwith to the society, association or corporation an amount equal to the amount of the levy paid in respect of the blank audio recording medium purchased.

(3) If regulations made under paragraph 87(a) provide for the registration of societies, associations or corporations that represent persons with a perceptual disability, subsections (1) and (2) shall be read as referring to societies, associations or corporations that are so registered.

1997, c. 24, s. 50.

Regulations

87. The Governor in Council may make regulations

(a) respecting the exemptions and refunds provided for in section 86, including, without limiting the generality of the foregoing,

(i) regulations respecting procedures governing those exemptions and refunds,

(ii) regulations respecting applications for those exemptions and refunds, and

(iii) regulations for the registration of societies, associations or corporations that represent persons with a perceptual disability;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes and provisions of this Part.

1997, c. 24, s. 50.

Civil Remedies

88. (1) Without prejudice to any other remedies available to it, the collecting body may, for the period specified in an approved tariff, collect the levies due to it under the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

(2) The court may order a person who fails to pay any levy due under this Part to pay an amount not exceeding five times the amount of the levy to the collecting body. The collecting body must distribute the payment in the manner set out in section 84.

(3) Where any obligation imposed by this Part is not complied with, the collecting body may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with that obligation.

(4) Before making an order under subsection (2), the court must take into account

(a) whether the person who failed to pay the levy acted in good faith or bad faith;

(b) the conduct of the parties before and during the proceedings; and

(c) the need to deter persons from failing to pay levies.

1997, c. 24, s. 50.

PART IX GENERAL PROVISIONS

89. No person is entitled to copyright otherwise than under and in accordance with this Act or any other Act of Parliament, but nothing in this section shall be construed as abrogating any right or jurisdiction in respect of a breach of trust or confidence.

1997, c. 24, s. 50.

90. No provision of this Act relating to

(a) copyright in performer's performances, sound recordings or communication signals, or

(b) the right of performers or makers to remuneration

shall be construed as prejudicing any rights conferred by Part I or, in and of itself, as prejudicing the amount of royalties that the Board may fix in respect of those rights.

1997, c. 24, s. 50.

91. The Governor in Council shall take such measures as are necessary to secure the adherence of Canada to

(a) the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, as revised by the Paris Act of 1971; and

(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961.

1997, c. 24, s. 50.

92. (1) Within five years after the coming into force of this section, the Minister shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including any recommendations for amendments to this Act.

(2) The report stands referred to the committee of the House of Commons, or of both Houses of Parliament, that is designated or established for that purpose, which shall

(a) as soon as possible thereafter, review the report and undertake a comprehensive review of the provisions and operation of this Act; and

(b) report to the House of Commons, or to both Houses of Parliament, within one year after the laying of the report of the Minister or any further time that the House of Commons, or both Houses of Parliament, may authorize.

1997, c. 24, s. 50.

SCHEDULE I
(Section 60)
EXISTING RIGHTS

Column I Existing Right	Column II Substituted Right
<i>Works other than Dramatic and Musical Works</i>	
Copyright	Copyright as defined by this Act ¹ .
<i>Musical and Dramatic Works</i>	
Both copyright and performing right	Copyright as defined by this Act.
Copyright, but not performing right	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in column I thereof, have the following meanings:

"Copyright" in the case of a work that according to the law in force immediately before January 1, 1924 has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law, if any, to restrain publication or other dealing with the work;

"Performing right", in the case of a work that has not been performed in public before January 1, 1924, includes the right at common law, if any, to restrain the performance thereof in public.

¹In the case of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article or portion in a separate form to which the author is entitled on January 1, 1924 or would if this Act had not been passed have become entitled under section 18 of *An Act to amend the Law of Copyright*, being chapter 45 of the Statutes of the United Kingdom, 1842.

R.S., c. C-30, Sch. I; 1976-77, c. 28, s. 10.

SCHEDULE II

[Repealed, 1993, c. 44, s. 74]

SCHEDULE III

[Repealed, 1997, c. 24, s. 51]

Directive on procedure

This directive outlines the procedure the Board usually follows in considering proposed tariffs and the objections thereto. It aims to ensure that the proceedings are conducted as efficiently and simply as possible, while providing the appropriate procedural safeguards.

A. GENERAL PROVISIONS

1. Filing and Service of Documents

A document may be filed with the Board by delivering it, by mail, by courier, by facsimile or electronic mail to:

The Secretary General

Copyright Board

56 Sparks Street, Suite 800

Ottawa, Ontario K1A 0C9

Telephone: (613) 952-8621

Telecopier: (613) 952-8630

Electronic mail: Majeau.Claude@cb-cda.gc.ca

Where possible, participants shall provide the Board with an electronic version (in Word or WordPerfect) of any document they file with the Board. Those who intend to file a database as evidence should contact the Secretary General in order that appropriate arrangements may be made.

A document may be served by mail, by courier or by any electronic means of communication. A document filed with the Board must be accompanied by a list of the names of the persons served. Evidence of service must be kept; this will serve, in case of disagreement, to establish that service was effectively made.

Filing or service of a document is effected on the date that the document is received by the person being served.

2. Comments

Any person may comment in writing on any aspect of these proceedings. As a general rule, comments received later than the date determined at the end of the hearings, by which participants must present or file oral or written arguments, will not be considered. In due course, the Board will forward to participants a copy of these comments.

3. Intervenors

The Board may allow any person to intervene in these proceedings. The intervention is allowed insofar as the Board finds it useful, given the interest of the person requesting to intervene and the nature of the participation contemplated by that person.

Any person intending to intervene must file with the Board a request describing that person's interest in the proceedings and the manner in which the person intends to participate. The request must also specify whether participation will be limited to written comments, or will extend to filing evidence or cross-examining witnesses.

A motion to intervene should be filed as early as possible. The Board may deny leave to intervene if granting the motion would unduly postpone the proceedings.

The Board will advise parties of any request to intervene. A party may object to such a request. Once allowed to intervene, intervenors have the same rights and obligations as other participants, unless the Board directs otherwise, and must comply with the rules and deadlines as set out in this directive.

Intervenors and other participants who support the position of a collective shall comply with the deadlines that apply to that collective. At the hearing, they will be asked to submit any evidence they may be allowed to put forward immediately after that collective.

4. **List of Exhibits**

The Board will issue and update periodically a list of exhibits filed. A person who has not received a document may obtain a copy from the person who filed it.

5. **Format of Documents**

Where possible, documents filed should be of the dimensions 8 1/2" x 11".

6. **Subpoena**

The Board may, upon request or of its own motion, issue a subpoena to require a person to appear at the hearing, to testify and to produce any document the Board may consider helpful. A subpoena is issued by the Secretary General.

7. **List of Participants and Intervenors**

Appendix I lists the names and addresses of those persons who have advised the Board of their intention to participate or to intervene in these proceedings or to file observations in respect thereto.

8. **Confidential Treatment of Documents**

Any document filed with the Board is placed on the public record unless the Board orders otherwise.

Issues of confidentiality should be discussed among participants, with a view to reaching an agreement on the way the document should be handled or the information circulated. It is only after this has been done that a request for confidential treatment should be filed with the Board.

The request is filed with the Board, with the relevant document. The request shall set out the reasons therefor and indicate any way in which the information might be shared with other participants while preserving the confidential nature of the information. The request shall be served on all other participants, who will have one week from the service of the request to comment on it.

When ruling on a request for confidential treatment, the Board may order that the document not be put on the public record. It may also order that an abridged version or part of the document be produced, or order that the document be disclosed to participants or to their counsel on a confidential basis. The Board may also, of its own motion, and even where the participants have agreed on the issue, decline to treat a document as confidential.

If a request to treat a document as confidential is denied, the disclosure will be postponed long enough to allow the person who made the request to either withdraw the document, if the Board allows it, or initiate any recourse that person may see fit to take.

9. **Transcripts**

The Board has arranged for a commercial service to prepare transcripts of the hearing. Copies may be obtained directly from that firm.

10. **Language of Communication**

Participants, intervenors and witnesses may address the Board and communicate with each other in the official language of their choice. Upon request made to the Secretary General, 14 days before it is required, simultaneous interpretation will be provided at the hearing.

Documents may be drafted in either official language.

11. **Flexibility**

The Board may dispense with or vary any of the provisions of this Directive.

B. ORDER OF PROCEEDINGS

1. **Pre-Hearing Conference**

If required, the Board will hold a pre-hearing conference if it may help to simplify or accelerate the presentation of the evidence and the conduct of the proceedings.

2. **Interrogatories**

Only one copy of the interrogatories are filed with the Board. They must be served on the participant to whom they are addressed by the date set for that purpose and presented in the form set out in Appendix II. Interrogatories can be addressed to any participant who is allowed to file evidence or to cross-examine witnesses.

The Board may, at any time, direct interrogatories to a participant.

3. **Objections to Interrogatories**

A participant who receives an interrogatory and who is contemplating objecting to it shall first attempt to resolve the issue with the person who addressed the interrogatory.

If the objector to an interrogatory contends that the information requested is not available, he should then offer any alternative available information that may be of assistance to the person who directed the interrogatory.

Any remaining misunderstanding (including issues of confidentiality) must be submitted to the Board for decision. To allow for this, the person who asked the interrogatory serves on the objector and files with the Board, in eight copies, by the date set for that purpose, the interrogatory, the statement of the objector's grounds and a statement of the grounds in support of maintaining the interrogatory.

4. **Responses to Interrogatories**

Responses must be served on the person who directed the interrogatory by the date set for that purpose and presented in the form set out in Appendix III. Only one copy is filed with the Board.

5. **Responses Considered Incomplete or Unsatisfactory**

The person who finds a response to one of its interrogatories unsatisfactory may ask the Board to order a new response, by the date set for that purpose.

6. **Filing of Cases**

Participants shall serve on all other participants and file with the Board, in eight copies, by the date set for that purpose, the following documents:

(a) a statement of case setting out their arguments and how they intend to establish them, including a list of the witnesses they will bring, a summary of non-expert testimonies and an estimate of the time required to present their evidence; and

(b) all documents upon which they intend to rely during the hearing.

The statement of case ought to be in the form of a written opening statement and detailed enough to allow the Board to follow easily the evidence as it is presented and to determine, in advance of the hearing, any issue that the evidence and arguments might raise.

A participant wishing to adapt its position so as to reflect the evolution of the file in the course of the proceedings may file a modified version of its statement.

To the extent possible, exhibits should be submitted in a three-ring binder or other similar binder format. Exhibits should be separated by consecutively numbered tabs. Each exhibit must bear the abbreviation of the name of the participant producing it, as assigned in Appendix I, together with its consecutive number. Exhibit No. 1 is the statement of case.

Extremely voluminous source documentation used to prepare derived exhibits is filed in one copy with the Board, and is not served on participants. The Board will arrange for reasonable access to such documentation.

Participants who fail to file a statement of case are deemed to have withdrawn from the proceedings.

7. **Supplementary Evidence**

Collectives can file supplementary evidence by the date provided for this in the timetable. That evidence should only be in response to the evidence filed by the objectors. Collectives should not introduce evidence that is unrelated to the objectors' evidence or evidence that a collective could reasonably have chosen to file earlier with its evidence in chief.

8. **Pre-Hearing Brief**

No later than the date set for that purpose, the participants will file a pre-hearing brief on legal issues (along with a list of authorities referred to) and possible admissions.

Filing of documents during the hearing must be kept to a strict minimum. Any participant who intends to file such evidence must provide other participants and the Board with copies as soon as possible.

9. **Decision**

The Board will send a copy of its decision, with reasons therefor, to all participants.