

Before the  
UNITED STATES COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

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In the Matter of :  
Docket No. 96-4 CARP DPRA  
DIGITAL PHONORECORD DELIVERY :  
RATE ADJUSTMENT PROCEEDING :  
:  
..... X

**AMENDED JOINT PETITION FOR ADJUSTMENT OF  
DIGITAL PHONORECORD DELIVERY ROYALTY RATES  
SUBMITTED BY  
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.,  
THE SONGWRITERS GUILD OF AMERICA AND  
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.**

This amended petition for adjustment of digital phonorecord delivery ("DPD") royalty rates is submitted jointly at the request of the Copyright Office and pursuant to 17 U.S.C. §§ 115(c) and 803(a) and 37 C.F.R. § 251.63(b) by the National Music Publishers' Association, Inc., The Songwriters Guild of America and the Recording Industry Association of America, Inc. (the "Petitioners").

The Petitioners submit the accompanying Amended Proposal Concerning Digital Phonorecord Delivery Royalty Rate Adjustments (the "Amended Proposal") and hereby request that the Copyright Office, pursuant to 17 U.S.C. § 803(a) and 37 C.F.R. § 251.63(b), promulgate regulations effecting an adjustment of the royalty rates in the manner set forth in the Amended Proposal. This Amended Proposal follows and supersedes paragraphs 3 through 6 of the original proposal (the

"Original Proposal") accompanying the Joint Petition for Adjustment of Physical Phonorecord and Digital Phonorecord Delivery Royalty Rates submitted by the Petitioners on November 5, 1997 ("Original Petition"), and resolves concerns raised in comments on the Original Proposal and the Memorandum of NMPA, SGA and RIAA Regarding Adoption of Rates for General Digital Phonorecord Deliveries by the Coalition of Internet Webcasters, Broadcast Music, Inc., the United States Telephone Association, the American Society of Authors, Composers, and Publishers and SESAC, Inc (the "Commenting Parties").

The Amended Proposal was formulated after the Petitioners and the Commenting Parties held discussions for the purpose of arriving at a mutually agreeable proposal respecting the DPD royalty rates. Based upon representations made by the Commenting Parties, the Petitioners understand that the Commenting Parties have no objection to the accompanying Amended Proposal. Petitioners believe that the promulgation of rates and terms for DPDs as provided in the Amended Proposal as soon as possible will facilitate the licensing of copyrighted musical works for the benefit of copyright owners and users and the general public. Accordingly, Petitioners suggest that if a notice and comment period for the Amended Proposal is necessary, that period should be thirty (30) days.

As set forth in the Original Petition, the Petitioners have a "significant interest" in the royalty rates to be adjusted, within the meaning of section 803(a)(1) of the Copyright Act. National Music Publishers' Association, Inc. ("NMPA") is an association of over 600 commercially active American music publishers, whose

interests NMPA represents through a variety of legislative, legal, and public relations initiatives. NMPA's wholly owned subsidiary, The Harry Fox Agency, Inc., acts as a licensing agent for over 17,000 music publishers.

The Songwriters Guild of America ("SGA") is a national organization of over 4,500 songwriters. Its primary functions are to promote the interests of authors and composers in their dealings with those who market and use their creative works, and in legislative matters. Like NMPA, SGA represents the interests of those who receive royalties for the use of copyrighted musical works.

Recording Industry Association of America, Inc. ("RIAA") is an association of approximately 350 recording companies. Its members are the leading manufacturers of the records, tapes and compact discs sold in the United States, and are engaged in the distribution of music through DPD systems. RIAA thus represents the interests of those who must pay royalties for use of copyrighted musical works in DPDs.

The accompanying Amended Proposal is submitted on the understanding that its various provisions are not severable. The Amended Proposal is without prejudice to any position, contention or argument that the Petitioners may take in any proceeding or litigation, and is not intended to be, and should not constitute, a precedent in any future rate adjustment proceeding.

Dated: December 4, 1998

Respectfully submitted,

NATIONAL MUSIC PUBLISHERS'  
ASSOCIATION, INC.

By: Edward P. Murphy/jcs  
Edward P. Murphy  
President  
711 Third Avenue  
New York, New York 10017  
(212) 370-5330

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON

By: Carey R. Ramos/jcs  
Peter L. Felcher  
Carey R. Ramos  
Jacqueline C. Charlesworth  
1285 Avenue of the Americas  
New York, New York 10019  
(212) 373-3000

Counsel for NMPA

THE SONGWRITERS GUILD OF AMERICA

By: George David Weiss/jcs  
George David Weiss  
President  
1500 Harbor Boulevard  
Weehawken, New Jersey 07087  
(201) 867-7603

RECORDING INDUSTRY ASSOCIATION  
OF AMERICA, INC.

By: Cary H. Sherman /ps  
Cary H. Sherman  
Senior Executive Vice President and  
General Counsel  
1330 Connecticut Avenue, N.W., Suite 300  
Washington, D.C. 20036  
(202) 775-0101

ARNOLD & PORTER

By: Steven R. Englund /ps  
Steven R. Englund  
555 Twelfth Street, N.W.  
Washington, D.C. 20004  
(202) 942-5000

Counsel for RIAA

**Amended Proposal Concerning Digital  
Phonorecord Delivery Royalty Rate Adjustments**

Amendments to 37 C.F.R. Part 255

1. The title of section 255.5 is revised to read "Royalty rate for digital phonorecord deliveries in general." and the present paragraph of section 255.5 is designated as paragraph (a).

Section 255.5 is further revised by adding the following new paragraph:

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. § 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in section 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. § 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

2. A new section 255.6 is added, which reads as follows:

**§ 255.6 Royalty rate for incidental digital phonorecord deliveries.**

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. § 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in section 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. § 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of

Congress shall proceed in accordance with 17 U.S.C. § 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. § 803(a)(1).

3. A new section 255.7 is added, which reads as follows:

**255.7 Future proceedings.**

The procedures specified in 17 U.S.C. § 115(c)(3)(C) shall be repeated in 1999, 2001, 2003 and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005 and 2008. The procedures specified in 17 U.S.C. § 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. § 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. § 803(a)(1), in 2000, 2002, 2004 and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005 and 2008. Thereafter, the procedures specified in 17 U.S.C. § 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. § 115(c)(3)(C) and (D).

4. A new section 255.8 is added, which reads as follows:

**255.8 Public performances of sound recordings and musical works.**

Nothing in Part 255 annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. §§ 106(4) and 106(6).

CERTIFICATE OF SERVICE

I hereby certify that I have this 4<sup>th</sup> day of December, 1998, served the foregoing Amended Joint Petition for Adjustment of Digital Phonorecord Delivery Royalty Rates Submitted by National Music Publishers' Association, Inc., The Songwriters Guild of America and Recording Industry Association of America, Inc., by mail to the following counsel.



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Steven R. Englund

Seth D. Greenstein  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005  
*Counsel for Coalition of Internet  
Webcasters*

Bruce G. Joseph  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
*Counsel for the United States  
Telephone Association*

Marvin L. Berenson  
Joseph J. DiMona  
BMI  
320 West 57<sup>th</sup> Street  
New York, New York 10019

Michael J. Remington  
Jeffrey J. Lopez  
Drinker Biddle & Reath LLP  
901 15th Street, N.W.  
Suite 900  
Washington, D.C. 20005  
*Counsel for Broadcast Music, Inc.*

Edward P. Murphy  
National Music Publishers' Association  
and the Harry Fox Agency, Inc.  
711 Third Avenue  
New York, New York 10017

Peter L. Felcher  
Carey R. Ramos  
Paul, Weiss, Rifkind, Wharton &  
Garrison  
1285 Avenue of the Americas  
New York, New York 10019-6064  
*Counsel for the National Music  
Publishers' Association and the  
Henry Fox Agency, Inc.*

George David Weiss  
The Songwriters Guild of America  
1500 Harbor Boulevard  
Weehawken, New Jersey 07087

Bruce A. York  
Ann E. Chaitovitz  
American Federation of Television  
and Radio Artists  
260 Madison Avenue  
New York, New York 10017

Arthur Levine  
Finnegan, Henderson, Farabow,  
Garrett & Dunner  
1300 I Street, N.W.  
Washington, D.C. 20005  
*Counsel for American Federation  
of Television and Radio Artists*

Bruce D. Sokler  
Fernando R. Laguarda  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, D.C. 20004-2608  
*Counsel for Digital Cable Radio  
Associates and America Online, Inc.*

Beverly A. Willett  
414 Clinton Street  
Brooklyn, New York 11231

Joan M. McGivern  
ASCAP  
One Lincoln Plaza  
New York, New York 10023

I. Fred Koenigsberg  
White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036-2787  
*Counsel for ASCAP*

Henry R. Kaufman  
SESAC, Inc.  
421 West 54<sup>th</sup> Street  
New York, New York 10019