

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

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<b>In the Matter of</b>	)	
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<b>Electronic Filing Of Documents</b>	)	<b>Docket No. 16-CRB-0015-RM</b>
	)	
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**COMMENTS OF PROGRAM SUPPLIERS**

The Motion Picture Association of America, Inc. (“MPAA”), its member companies and other producers and/or syndicators of syndicated movies, series, specials, and non-team sports broadcast by television stations (“Program Suppliers”), submit the following comments in response to the November 23, 2016 Federal Register Notice published by the Copyright Royalty Judges (“Judges”), which seeks comments regarding the Judges’ proposal to amend their procedural regulations governing the filing and delivery of documents to accommodate electronic filing of documents, and to specify the required format of both electronic and paper documents. *See* 81 Fed. Reg. 84526 (November 23, 2016) (“Notice”).

Program Suppliers have historically participated in proceedings conducted by the Copyright Royalty Tribunal, the Copyright Arbitration Royalty Panels, the Copyright Office, and the Copyright Royalty Judges (“Judges”) pursuant to Sections 111 and 119 of the Copyright Act. As longstanding participants in royalty proceedings, Program Suppliers support the Judges’ initiative to adopt an electronic filing and case management system for the Copyright Royalty Board (“eCRB”), which will modernize and bring greater efficiency to the administration of all

compulsory license schemes. Program Suppliers welcome the opportunity to provide the Judges with specific comments to several of the proposed regulatory amendments, as set forth below.

**I. [Proposed] Section 350.3(b)(2). File Type.**

Proposed § 350.3(b)(2) provides, in part, that “[p]arties must file all pleadings and documents in Portable Document Format (PDF), with the exception of proposed orders.”

This language in proposed § 350.3(b)(2) does not contain any specific information regarding eCRB’s maximum capacity for receiving electronic files, or explain what particular file size limitation for PDF pleadings and documents would exist in eCRB. Moreover, a file size or capacity limitation is not apparent elsewhere in the Judges’ proposed regulations. Program Suppliers respectfully request that the proposed regulations expressly state a file size limitation for filing pleadings and documents in PDF. A stated file size limit will greatly assist parties in determining in advance of a filing whether particular pleadings and documents will exceed the capacity requirements of eCRB, and will need to be filed with the Judges in paper copy.

In addition, neither proposed § 350.3(b)(2), nor the other proposed regulatory amendments, provide guidance as to whether exhibits and attachments must be submitted as filings separate from the principal document to which they relate, or whether exhibits and attachments may be included within the principal document. If exhibits are to be submitted as filings separate and apart from the principal document to which they relate, proposed § 350.3(b)(2) does not state whether exhibits may be split into sub-volumes if their file size exceeds any applicable eCRB file size limits. Program Suppliers submit that such expressed guidance would greatly facilitate proper electronic filing of documents with eCRB.

## **II. [Proposed] Section 350.3(c). Length Of Submissions.**

Proposed § 350.3(c) imposes page and word count limits for motions, responses, and replies, and expressly states that such page and word limitations are “exclusive of exhibits, proof of delivery, and the like.”

While Program Suppliers are not opposed to the imposition of page limits,<sup>1</sup> especially because the proposed regulations expressly state that a party can seek an enlargement of the applicable page limit via a motion filed three days in advance of the applicable filing deadline, Program Suppliers seek to have the Judges modify the proposed rule so that if a page limit extension is granted as to a motion or opposition, that same page limit expansion will automatically apply to any responsive pleadings (*i.e.*, if a page limit for a motion is enlarged, then the opposition and reply for the motion would be automatically enlarged by the same amount, without the need for a separate request for enlargement of the page limit). This appears to be an equitable treatment of movants and non-movants respecting requests to enlarge the page limit, and would promote judicial economy.

Program Suppliers further seek to have the Judges modify the proposed rule so that it expressly states that page and word limitations for motions, responses, and replies are exclusive of “cover pages,” “tables of contents,” “tables of authorities,” and “signature blocks.”

## **III. [Proposed] Section 350.4. Form Of Motion And Responsive Pleadings.**

Proposed § 350.4 provides, in part, that “[a] motion, responsive pleading, or reply must include the following content and conform to the following format[ .].” The provision then

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<sup>1</sup> However, as set forth *infra*, should the Judges adopt a mandated format for motions, responsive pleadings, and replies as set forth in proposed § 350.4, Program Suppliers submit that the page limitations set forth in proposed § 350.3(c) be enlarged to 25 pages or 6,250 words for motions, 25 pages or 6,250 words for responses, and 15 pages or 3,750 words for replies.

specifies the following required structural format and order or presentation: (a) Relief requested; (b) Statement of facts; (c) Statement of issues; (d) Evidence relied upon; and (e) Legal authority.

Program Suppliers do not oppose the imposition of a set of required contents and structural formats for pleadings. However, the required content, as proposed, are not always present in pleadings.<sup>2</sup> Furthermore, both the required content and order of presentation, as proposed, may overly complicate simple pleadings and would very likely lengthen pleadings (particularly short ones). To alleviate these challenges, Program Suppliers submit that, first, the format specifications set forth in proposed § 350.4 should only apply to pleadings that are longer than 10 pages or 2,500 words. Second, Program Suppliers recommend that proposed § 350.4 (d) and (e) be removed, and replaced with a new sub-section (d) that combines these proposed regulatory subsections under the heading “Argument.” This will allow participants greater flexibility in the way that they structure their arguments while still retaining the same content requirements set forth by the Judges. Program Suppliers’ proposed new § 350.4 (d) would read as follows:

(d) Argument. The pleading must state with particularity any evidence on which it is based, including all relevant, admissible documentary evidence as attachment(s). Parties must cite any legal authority upon which they rely for the relief they seek.

Third, if the Judges adopt § 350.4 as proposed or Program Suppliers’ user-friendly amendment to that proposal, allowing additional pages or words would enable easier compliance. Therefore, Program Suppliers respectfully request that the page limitations set forth in proposed § 350.3(c) be enlarged to 25 pages or 6,250 words for motions, 25 pages or 6,250 words for

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<sup>2</sup> For example, a motion seeking relief based solely on a legal argument (*i.e.*, a question of law, where no facts are in dispute), may not need to reference or cite “Evidence relied upon.”

responses, and 15 pages or 3,750 words for replies. This would better enable parties to conform with § 350.4 and fit within the page limitations of § 350.3(c).

**IV. [Proposed] Section 350.5(j)(1). Exceptions To Requirement Of Electronic Filing—  
Certain Exhibits Or Attachments.**

Proposed § 350.5(j)(1) provides that “[p]arties may file in paper form any exhibits or attachments that are not in a format that readily permits electronic filing, such as oversized documents; or are illegible when scanned into electronic format. Parties filing paper documents or things pursuant to this paragraph must deliver legible or usable copies of the documents or things in accordance with paragraph 350.5(a)(2) and must file electronically a notice of filing that includes a certificate of delivery.”

As stated above, Program Suppliers request clarity on eCRB’s file size limitation that, if exceeded, would render a document “oversized” for electronic filing. Advance knowledge of eCRB’s file size limitations will greatly facilitate the parties’ proper filing of documents.

Program Suppliers also seek clarity on when a paper submission of a document that is “not in a format that readily permits electronic filing” would be due to be filed with the Judges. While the proposed regulations state that a party is required to file an electronic notice that the paper copy of the document that could not be filed electronically was delivered to the Copyright Royalty Board (“CRB”), with proof of delivery, it does not set forth the deadline by which delivery to the CRB is required. Program Suppliers recommend that the Judges require parties to file such oversized documents in hard copy form either the same day that the electronic portion of the filing is submitted via eCRB, or, in the event that the eCRB portion of the filing was submitted after CRB business hours, the next business day that the CRB is open.

In addition, Program Suppliers seek clarity on the proposed language in § 350.5(j)(1) requiring that “[p]arties filing paper documents or things pursuant to this paragraph must deliver

legible or usable copies of the documents or things in accordance with paragraph 350.5(a)(2).” (emphasis added). Proposed § 350.5(j)(1)’s cross-reference to “paragraph 350.5(a)(2)” appears to be in error, as neither the newly proposed § 350.5(a)(2) nor the current § 350.5(a)(2) appear to set forth the manner in which paper filings should be delivered. *See* [Proposed] § 350.5(a)(2) (“Except as otherwise provided in this chapter, all attorneys must file documents with the Copyright Royalty Board through eCRB. *Pro se* parties may file documents with the Copyright Royalty Board through eCRB, subject to § 350.4(c)(2).”); Current § 350.5(a)(2) (“To compute the due date for filing and serving any document or performing any other act directed by an order of the Copyright Royalty Judges or the Copyright Royalty Judges’ rules: ... Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.”).

**V. [Proposed] Section 350.5(l)(3). Incorrectly Filed Documents And Technical Difficulties.**

Proposed § 350.5(l)(3) provides, in part, that “[a] filer encountering technical problems with an eCRB filing must immediately notify the Copyright Royalty Board of the problem either by email or by telephone, followed promptly by written confirmation. This rule does not provide authority to extend statutory time limits.”

Program Suppliers seek clarity as to whether technical support will be available to parties after 5 p.m. EST, and whether there will be a default rule in place for what a party is to do with a filing that it intends to file between 5 p.m. EST and 11:59 p.m. EST should it encounter technical problems with eCRB after hours (*e.g.*, whether parties should send the filing to the CRB via email, or take some other action to ensure timely receipt by the Judges).

**VI. [Proposed] Section 350.6(f). Responses And Replies.**

Proposed § 350.6(f) provides that “[r]esponses in support of or opposition to motions must be filed within five days of the filing of the motion. Replies to responses must be filed within four days of the filing of the response.”

While Program Suppliers do not object to the retention of the current deadlines of five days for filing an opposition, and four days for filing a reply as set forth in proposed § 350.6(f), Program Suppliers would support a reasonable enlargement of the response and reply deadlines provided that such an enlargement is not likely to result in any hindrance of or delay to the timely distribution of cable and/or satellite royalties.

**VII. [Proposed] Section 350.6(g). Participant List.**

Proposed § 350.6(g) provides that “[t]he Copyright Royalty Judges will compile and distribute to those parties who have filed a valid petition to participate the official participant list for each proceeding. For all paper filings, a party must deliver a copy of the document to counsel for all other parties identified in the participant list, or, if the party is unrepresented by counsel, to the party itself. Parties must notify the Copyright Royalty Judges and all parties of any change in the name or address at which they will accept delivery and must update their eCRB profiles accordingly.”

Program Suppliers recommend that proposed § 350.6(g) be amended to clarify that the official participant list distributed by the Judges will contain information about the parties that have signed up for eCRB (and which parties have not) to ensure that each party is aware of how each other party should be served.

**VIII. [Proposed] Section 351.1. Initiation Of Proceedings.**

Proposed § 351.1 provides, in part, that “[a] petition to participate must be accompanied with a filing fee of \$150 or the petition will be rejected. For petitions filed electronically through eCRB, payment must be made to the Copyright Royalty Board through the payment portal designated on eCRB.”

Program Suppliers recommend that proposed § 351.1 clarify whether, at the point of filing an initial Petition to Participate, any party needs to be served, and, if so, which parties and in what form (that is, electronically or by paper).

Program Suppliers hope these comments are helpful to the Judges, and would be pleased to either meet with the Judges to discuss these issues or to supplement these comments as the Judges deem necessary or appropriate.

Respectfully submitted,



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