

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of }
 }
Mechanical and Digital Phonorecord }
Delivery Rate Determination Proceeding }
_____ }
 }
Docket No. 2006-3 CRB DPRA


ORDER ON RIAA MOTION FOR REHEARING

Recording Industry Association of America (“RIAA”) filed, on February 23, 2009, a Motion to Vacate, or For Rehearing of, the February 6, 2009 Amendment to Final Determination of Rates and Terms. RIAA filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit on February 25, 2009. Section 803(d) of title 17 of the United States Code authorizes the appeal. It does not include the provisions of Federal Rules of Civil Procedure (“FRCP”) 50, 52, 59 or 60, nor the provisions of Federal Rules of Appellate Procedure (“FRAP”) 4, and more specifically FRAP 4(a)(4)(B). The April 27, 2009, Circuit Order directs the Copyright Royalty Judges (“Judges”) to dispose of the pending petition for rehearing and establishes jurisdiction for the Judges to rule on the motion.

Title 17 U.S.C. § 803(c)(2) permits a motion for rehearing.¹ Subpart (B) restricts the filing of a motion to within 15 days after the Judges deliver the initial determination to the participants. Consequently, motions for rehearing are limited to initial determinations and do not apply to final determinations, nor to amendments of final determinations, made pursuant to 17 U.S.C. § 803(c)(4). There is no authority for this motion. This procedure is consistent with a policy of establishing finality to orders.

The Motion for Rehearing is **DENIED** because Section 803 provides no opportunity for a motion for rehearing of an amendment to a final determination. Section 803 (c)(4) provides no subsequent motion for rehearing.

SO ORDERED.



James Scott Sledge
Chief U. S. Copyright Royalty Judge

DATED: July 13, 2009

¹ RIAA utilized this option with a Motion for Rehearing filed October 17, 2008. This motion was denied by order, dated November 12, 2008.