Copyright Royalty Board
The Library of Congress
P.O. Box 70077, Southwest Station
Washington D.C. 20024-0977

In the Matter of

Amendment to the Procedural Regulations and Procedures of the Copyright Royalty Judges in Royalty Rate and Distribution Proceedings

On September 11, 2006 the Copyright Royalty Judges, on behalf of the Copyright Royalty Board, published in the Federal Register, (71 FR 53325), adopted amendments to the procedural regulations governing the practices and procedures of the Copyright Royalty Judges in royalty rate and distribution proceedings effective as of September 11, 2006 to which comments are invited.

COMMENTS

The following are the comments of James Cannings as an individual and Our Own Performance Society, ("OOPS") as a group, ("Small Claimants").

1. §302.1 (a). Does the suggested amendment mean that final determinations by the Copyright Royalty Board will not be published in the Federal Register? Shouldn't paragraph (a) remain except for replacing Copyright Royalty Board with Copyright Royalty Judges?

2. The revision of §350.2 prejudices small claimants who seek to represent themselves as an organization or group. These claimants are otherwise entitled to royalty distribution proceedings under U.S.C. Title 17 803(4)(A) as amended.

The revision imposes hardship on small claimants for the following reasons: -.

(a) Representation is very costly. Through the intent of the aforementioned revision Small Claimants represented by an organization or group are forced to seek representation by an attorney. However, an organization or group may file for

royalties that are $10,000. or less. ***See*** H.R. 1036 – 2 dated Jan. 3, 2006, Sect. 803(b)(D)(II) "Copyright Royalty Judges Program Technical Corrections Act," which reduced that amount to $1,000.[1] Representation by an attorney in these proceedings would greatly reduce income from royalties. Moreover, such a group/organization's claim may exceed the $10, 000. or less limit as cited in U.S.C. Title 17 Section (6) 803(b) and pay the $150. filing fee.

(b) However, in both instances that claim may not be large enough to afford representation and also afford the copyright owner(s) a fair return for his/her's or their creative work as is the intent of U.S.C. Title 17 § 801(b)(1)(B). Furthermore, because of the financial burden of attorney's fees that will be placed squarely upon the shoulders of Small Claimants, the intent of the revision may discourage the availability of small claimant's creative works to the public as is the intent of U.S.C. Title 17 § 801(b)(1)(A).

It is therefore, respectfully submitted that the rule of equity be applied in this instant and that your Honors reconsider the language of the aforementioned revision and revise it to take into consideration organizations/groups of small claimants who may qualify for royalties for $10,000. or less or who may otherwise pay a $150. filing fee because their claim exceeds the limit of $10,000. or less but whose claim would not be as large as organizations/groups whose universe of claimants grant them the right to the lion's share, (millions of dollars), of royalties in a

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[1] It is stated therein that the Copyright Royalty Judges Program Technical Corrections Act U.S.C. Title 17 Section (6) 803(b) is amended to read:

> **(D) the petition to participate is accompanied by either--**
> **(i) in a proceeding to determine royalty rates, a filing fee of $150; or**
> **(ii) in a proceeding to determine distribution of royalty fees--**
>
> **(I) a filing fee of $150; or**
>
> **(II) a statement that the petitioner (individually or as a group) will not seek a distribution of more than $1000, in which case the amount distributed to the petitioner shall not exceed $1000.**

distribution proceeding. Please bear in mind that this amount by the aforementioned Act has been reduced to $1,000.

Wherefore, the language of §350.2 is appropriate as is and therefore, needs no revision, except where appropriate, by removing "Board" and adding, "Judges" in its place.

3. The removal of §350.4(3) prejudices all parties to proceedings, who may within the zone of reasonableness, plead to have documents stricken from the record for reasons as stated therein. It is hereby, respectfully submitted that this paragraph be allowed to remain as is.

4. The amendment of §350.4(f), seeks to reduce the number of days of oppositions and replies to motions.

To the best of my memory and belief, during a roundtable discussion held prior to the amendment of the Copyright Act of 2004, ***See*** the Copyright Royalty and Distribution Reform Act 2004, all participants in proceedings before the then Copyright Arbitration Royalty Panel were invited.

One of the many issues discussed was that of the number of 180 days within which the Copyright Arbitration Royalty Panel, ("CARP"), must make a determination. There was a general consensus, (including that of myself), that the statutory time within which the CARP must make a determination was too small a time frame for efficient and just adjudication.

Chairman LAMAR SMITH of the Subcommittee on Courts, the Internet, and Intellectual Property's, representative, who moderated the discussion on behalf of the Chairman, noted this issue for consideration by the Chairman of the Subcommittee.

Evidently Congress took this consensus into consideration because in the Copyright Royalty and Distribution Reform Act of 2004 Public Law 108-419 108,th Congress enlarged the time within which a final determination must be issued by the Copyright Royalty Judges from 180

days to more than 330 days (11 months and 21 days). ***See also*** 37 CFR Ch. 111(7-1-06 Edition) §352.2 - Timing.

Copyright Royalty and Distribution Reform Act of 2004 Public Law 108-419 108,th Sec. 803. Institution of proceedings reads:

> **(c)(1) Determination of Copyright Royalty Judges.**
>
> **Timing--The Copyright Royal Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(6)(C)(x), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.**

It is therefore, respectfully submitted that §350.4(f) be allowed to remain as is, or enlarged, but **not** reduced.

WHEREFORE, for reasons aforementioned it is respectfully submitted that the Copyright Royalty Judges take these comments into serious consideration and make changes, as it deems necessary, to the Procedural Regulations for the Copyright Royalty Board.

Respectfully Submitted

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