

WRF Copyright Attorneys Monitor Rejection of Proposed Copyright Royalties for Webcasting Sound Recordings

May 21, 2002

Washington, DC—WRF's Copyright Practice Group has been actively involved in following the events of the recently concluded Copyright Arbitration Royalty Panel (CARP) proceeding to propose rates for the digital performance of sound recordings by certain nonsubscription transmissions. Attorneys Bruce G. Joseph and Karyn K. Ablin recently appeared on a panel before the U.S. Copyright Office to discuss issues related to that CARP proceeding.

On May 21, 2002, the Librarian of Congress, based upon the recommendation of the Register of Copyrights, rejected the Copyright Arbitration Royalty Panel's February 20, 2002 report proposing the compulsory license copyright royalties that webcasters must pay to sound recording owners to transmit sound recordings over the Internet, including transmissions over the Internet by AM and FM radio stations of their broadcast programming. These payments are arguably required under a 1998 amendment to the Copyright Act, which granted record companies, for the first time, the right to charge performance fees for non-subscription digital transmissions of sound recordings. Over-the-air transmissions (even digital over-the-air transmissions) by AM or FM radio stations remain exempt from this new right of record companies.

The arbitration panel had proposed rates of .07 cent per listener per song for commercial radio simulcasts and .14 cent per listener per song for Internet-only webcasts. For noncommercial radio broadcasters not eligible to receive funding from the Corporation for Public Broadcasting, the panel had proposed separate rates of .02 cent per listener per song for simulcasts, .05 cent per listener per

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song for archived and substituted transmissions and up to two side channels of Internet-only programming, and .14 cent per listener per song for additional side channels.

For both webcasters and broadcasters (commercial and noncommercial), the arbitration panel had proposed an additional license fee of 9% of total performance fees to cover the temporary copies of sound recordings that services make to enable or facilitate the digital transmission of those recordings. The panel had also proposed a minimum annual fee of \$500 for each licensee and terms governing the above performance and reproduction licenses.

In rejecting the panel's determination, the Librarian did not specify the portions of the determination it was rejecting. Rather, consistent with the governing statute, the Librarian advised that it would issue its final decision within 30 days of the rejection - *i.e.*, by June 20, 2002. The parties then will have 30 days to appeal the Librarian's decision to the U.S. Court of Appeals for the D.C. Circuit. Once the rates and terms have been finalized, they will apply for the period October 28, 1998 through December 31, 2002.