

LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 259****[Docket No. 2002-9 CARP]****Filing of Claims for DART Royalty Funds****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Waiver of regulation.

SUMMARY: Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2002. In order to ensure that their claims are timely received, claimants are encouraged to file their DART claims online or by fax, utilizing the special procedures described in this document.

EFFECTIVE DATE: December 2, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540. *See*

SUPPLEMENTARY INFORMATION for information about on-line electronic filing through the Copyright Office website. Submissions by facsimile should be sent to (202) 252-3423. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Susan Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:**Background**

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or

analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed “[d]uring the first 2 months of each calendar year” with the Librarian of Congress “in such form and manner as the Librarian of Congress shall prescribe by regulation.” 17 U.S.C. 1007. **Part 259 of title 37** of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February¹ or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.² 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as on-line submission or facsimile transmission.

Last year, due to severe disruptions in the delivery of mail to the Office caused by threat of possible anthrax contamination, the Copyright Office waived the regulations requiring that claims bear “the original signature of the claimant or of a duly authorized representative of the claimant,” 37 CFR 259.3(b), and prohibiting the filing of by “facsimile transmission,” 37 CFR 259.5(d), for the filing of claims to the DART royalty funds for the year 2001. See 67 FR 5213 (February 5, 2002). While mail delivery to the Office has now resumed, incoming mail continues to be irradiated and diverted to an off-site location for treatment, resulting in delays in its delivery. Consequently, in light of these continuing delays, the Office once again is waiving §§ 259.3(b) and 259.5(d) and allowing the on-line

and facsimile submission of DART claims to the 2002 royalty funds. The Office has decided not to allow the filing of claims by electronic mail because lists of joint claimants can now be filed through the Office’s website. The alternative methods set forth in this Notice apply only to the filing of DART claims for the 2002 royalties which are due by February 28, 2003, and in no way apply to other filings with the Office.

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2002

Claims to the 2002 DART royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their DART claims, the Office strongly encourages claimants to personally deliver their claims by 5 p.m. E.S.T. on February 28, 2003, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers are subject to treatment at the off-site facility before being delivered to the Office and will be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on February 28, 2003. Thus, claims should be hand delivered by the claimant or a representative of the claimant (*i.e.*, the claimant’s attorney or a member of the attorney’s staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR part 259.

b. On-line Submission

The Office has devised on-line electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms electronically as provided in the instructions accompanying the forms. DART forms will be posted on the Office Web site at <http://www.copyright.gov/carp/dart/index.html>. Claimants filing a joint claim may list each of their joint claimants directly on the Office’s on-line joint claim form or may submit the list of joint claimants as a file

attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document (“PDF”) format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants’ names will be rejected.

The DART forms will be available for use during the months of January and February. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed on-line must be received by the Office no later than 11:59 p.m. E.S.T. on February 28, 2003. Specifically, the completed electronic forms must be received in the Office’s server by that time. Any claim received after that time will be considered as untimely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims on-line are strongly encouraged to send their claim no later than February 27, 2003, in order to better ensure timely receipt by the Office.

When filing claims on-line, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant’s duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

c. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252–3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2003. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of § 259.5(d), which prohibits the filing of claims by

¹ In those years where the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims must be received by the first business day in March. 37 CFR 259.5(b).

² Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

d. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after the last day in February. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

Because of delays in mail delivery, claimants are urged not to use the mail as a means of filing their claims to the 2002 DART royalty funds. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, and/or that the mail, when received by the Office, will be damaged. Claims sent by mail should be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after February 28, 2003, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2002 DART royalties. The Office is not, and

indeed cannot, waive the statutory deadline for the filing of DART claims. *See, United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2003.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also, Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continuing delays in the delivery of the mail constitutes a special circumstance which has forced the Office to deviate from its usual mail processing procedures. Thus, given the delays in mail delivery, the Office believes that the public interest will best be served by waiving, for this filing period, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed on-line through the Office's website. *See* 67 FR at 5214.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after February 28, 2003. *See Locke, supra*. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed on-line and by facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: November 26, 2002.

David O. Carson,

General Counsel.

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