

for NAFTA-TAA under section 250 of the Trade Act of 1974.”

Signed in Washington, DC this 31st day of January 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2004-1 CARP DTRA4]

### Digital Performance Right in Sound Recordings and Ephemeral Recordings

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of termination of proceeding and current rates.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing the termination of the proceeding to determine reasonable rates and terms for two compulsory licenses for the period beginning January 1, 2005, and ending on December 31, 2006. One license allows public performances of sound recordings by means of eligible digital audio transmissions; the other permits the making of an ephemeral phonorecord of a sound recording in furtherance of making a permitted public performance of the sound recording. The rates and terms applicable to new subscription services, eligible nonsubscription services, and services that transmit performances to business establishments that were in effect on December 31, 2004, will remain in effect during 2005.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (“DPRA”), Public Law 104-39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of this license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of

1998 (“DMCA”), Public Law 105-304, in order to allow for the public performance of a sound recording when made in accordance with the terms and rates of the statutory license, 17 U.S.C. 114(d), by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. In addition to expanding the section 114 license, the DMCA also created a new statutory license for the making of an “ephemeral recording” of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), and those entities operating under the section 114 statutory license to make ephemeral recordings of a sound recording to facilitate those transmissions.

The statutory scheme for establishing reasonable terms and rates is the same for both licenses. Terms and rates may be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act. Rates and terms are set for a two-year period through this process, except when a different period is otherwise agreed upon by the parties as part of a negotiated agreement. See 17 U.S.C. 112(e)(6) and 114(f)(2)(C)(i)(II). Accordingly, on January 6, 2004, the Copyright Office announced the voluntary negotiation period to set rates and terms for the license period beginning January 1, 2005, and ending on December 31, 2006. 69 FR 689 (January 6, 2004) and 69 FR 5196 (February 3, 2004).

However, on November 30, 2004, the Copyright Royalty and Distribution Reform Act of 2004, (the “Act”), Public Law 108-419, 118 Stat. 2341, was enacted. This Act, which becomes effective on May 31, 2005, eliminates the Copyright Arbitration Royalty Panel (“CARP”) system and replaces it with three permanent Copyright Royalty Judges. In addition, the Act terminates the proceeding initiated in January 2004 to set rates and terms under sections 114(f)(2) and 112(e) for the 2005-2006 license period.

The Act further provides that the rates and terms in effect under section 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the **Federal Register** under the authority of the Small Webcaster

Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107-321) (including the amendments made by that Act) for the years 2003 through 2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of the first applicable date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code (effective May 31, 2005), or such later date as the parties may agree or the Copyright Royalty Judges may establish. In accordance with this provision, the rates and terms applicable to these services that were in effect on December 31, 2004, shall remain in effect at least for 2005.

Until such rates and terms have been established under the new procedures, beginning January 1, 2005, eligible small and noncommercial webcasters may elect to be subject to the terms and rates published in the Small Webcaster Settlement Act of 2002, Public Law 107-321, by complying with the procedures governing the election process set forth in that agreement not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. See 67 FR 78510 (December 24, 2002).

Dated: February 3, 2005

**Tanya M. Sandros,**

*Associate General Counsel.*

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in