

proceeding. At this juncture, § 251.63(b) requires the publication of the proposed rules to provide those persons with a substantial interest in the proceeding with an opportunity to comment on the rules. Provided that no party who is entitled to participate in a CARP on remand of this proceeding and who has a substantial interest in the rules files an objection and a Notice of Intent to Participate in a CARP proceeding to resolve an objection within the scope of this proceeding, the proposed rules will be adopted as final regulations.

The proposed terms shall govern SoundExchange, the collecting rights entity that was formed from the designated RIAA collective, in its capacity as the sole agent designated to receive royalty payments from the three subscription services that were parties to this proceeding. Terms governing the administrative functions of any future collective or the designation of alternative agents shall be decided in future rate adjustment proceedings either through negotiations or after a hearing before a CARP based upon a fully developed written record. *See, e.g.,* 67 FR 45239 (July 8, 2002). For this reason, parties must limit their comments to the terms offered in the context of the proceeding to set rates and terms for the three subscription services—Music Choice, DMX, and Muzak—for the period October 28, 1998 (the effective date of the Digital Millennium Copyright Act) through December 31, 2001, the remand order, and the law as amended by the SWSA.

Should a person object to the proposed terms, he or she must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate. Any proceeding convened to consider these terms would be a continuation of the prior CARP proceeding, Docket No. 96–5 CARP DSTRA, on remand from the United States Court of Appeals for the District of Columbia Circuit. *See*, 17 U.S.C. 802(g). Therefore, the content of the written challenge must include a statement explaining the basis of the person's substantial interest in that proceeding and entitlement to participate in that proceeding, the proposed rule the person finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule.

#### List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings.

#### Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 260 of 37 CFR as follows:

#### PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

1. The authority citation for part 260 continues to read as follows:

**Authority:** 17 U.S.C. 114, 801(b)(1).

##### § 260.2 [Amended]

2. In § 260.2, remove paragraph (d).

3. Section 260.3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

##### § 260.3 Terms for making payments of royalty fees.

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(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these payments to those parties entitled to receive such payments according to the provisions set forth at 17 U.S.C. 114(g)(2); Provided that the designated agent shall only be responsible for making distributions to those parties who provide the designated agent with such information as is necessary to identify and pay the correct recipient for such payments. The agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances by Licensees; Provided, however, that parties who have designated the agent may agree to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the designated agent upon payment protocols to be used by the designated agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(d) The designated agent may deduct from the payments made by Licensees under § 260.2, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments according to 17 U.S.C. 114(g)(2) may agree to permit the designated agent to deduct any additional costs.

(e) Commencing June 1, 1998, and until such time as a new designation is made, SoundExchange, which currently is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent that receives royalty payments and statements of account under this part 260 and shall continue to be designated as such if it should be separately incorporated.

4. Section 260.6 is revised to read as follows:

##### § 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the method of verification of the payment of royalty fees by the designated agent to interested parties; Provided, however, that the designated agent and any interested person may agree as to an alternative method of verification.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the designated agent during any given calendar year and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the designated agent. Such notice of intent shall also be served at the same time on the designated agent to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the **Federal Register** a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the designated agent shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those individuals or entities who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.