



1410-72-P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Parts 350 and 360

[Docket No. 17-CRB-0012 -RM]

Copyright Royalty Board Regulations Regarding Filing of Claims to Royalty Fees Collected Under Compulsory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges propose to amend regulations governing the filing of claims to royalty fees collected under compulsory license to reflect implementation of a new electronic filing system and to consolidate cable and satellite rules. The Judges solicit comments on the proposed rule.

DATES: Comments are due no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit electronic comments via email to crb@loc.gov. Those who choose not to submit comments electronically should see “How to Submit Comments” in the Supplementary Information section below for physical addresses and further instructions. The proposed rule is also posted on the agency’s website (www.loc.gov/crb).

FOR FURTHER INFORMATION CONTACT: Program Specialist by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

On September 23, 2016, the Library of Congress awarded a contract for the design and implementation of an electronic filing and case management system for the Copyright Royalty Board (“Board”). The Copyright Royalty Judges (“Judges”) anticipate that the new system will be available for use by claims filers, participants in proceedings before the Judges, and other members of the public having business with the Board (*e.g.*, persons wishing to comment on proposed regulations) by summer 2017. The Judges intend to make use of the system mandatory for attorneys representing participants in proceedings after a transition period.¹

As part of the Judges’ continuing oversight of the Board’s procedural regulations, the Judges propose to amend the claims filing regulations to accommodate electronic filing of claims. In addition, the Judges propose to consolidate nearly identical regulations for cable and satellite claims and make other amendments to the claims regulation to remove outdated references and enhance readability.

I. Part 350—General Administrative Provisions

The Judges propose adding a new rule 350.5(c)(3) which would provide that any claimant desiring to file with the Copyright Royalty Board a claim for distribution of copyright royalties may obtain an eCRB password. While filing of claims through eCRB will not be mandatory, any claimant wishing to file claims through eCRB will be required to obtain an eCRB password. Obtaining a password for claims filing will entail filling in a webform and responding to a confirmation email to activate the account. The eCRB system will also have an automated password recovery feature so that users who have forgotten their password can reset their password without human intervention.

¹ The Judges proposed regulations relating specifically to implementation of eCRB at 81 FR 84526 (Nov. 23, 2016).

The Judges proposed this regulation in the notice soliciting comments on the proposed eFiling regulations² but decided to re-propose it in response to a comment received on the earlier proposal.

II. Part 360—Filing of claims to royalty fees collected under compulsory licenses

The Judges propose revisions to Part 360 to accommodate filing of claims through the new electronic filing system. Proposed new rules 360.1 through 360.5 (proposed Subpart A) would replace current rules 360.1 through 360.15 (current Subparts A and B), which separately set out the filing requirements for cable and satellite claims. The current rules contain redundant information, which the Judges propose to remove. In addition, the proposal makes reference, where applicable, to the new electronic filing system (eCRB). The proposal also adds a new definition section (rule 360.2), which would define the terms *cable compulsory license royalty fees* and *satellite compulsory license royalty fees*.

Regulations for Digital Audio Recording Devices and Media Royalty Claims (DART), currently in rules 360.20 through 360.25 (Subpart C), would be redesignated as 360.20 through 360.24 (Subpart B). For the most part, the substance of the current DART rules would be retained, although the proposal makes applicable references to eCRB. In addition, proposed new rule 360.24 sets out the notice requirements of independent administrators appointed to manage and distribute royalty payments to nonfeatured musicians and vocalists and updates the timing of those administrators' notices. These provisions currently appear in rule 360.23.

Finally, the proposal would add a new Subpart C: Rules of General Application, which would address amendment of claims (proposed new rule 360.30), withdrawal of claims (proposed new rule 360.31), and reinstatement of previously withdrawn claims (proposed new

² See 81 FR 84526.

rule 360.23). The Judges believe that these proposals will provide important guidance on the process for amending, withdrawing, and reinstating claims.

The Judges solicit comments on the rule proposal as a whole and on each of the proposed rules. In particular, the Judges seek comment on whether the proposed new rules that consolidate the cable and satellite claims filing rules enhances the clarity of those rules and appropriately reduces unnecessary redundancies. The Judges also seek comment on whether there are other opportunities within these proposed rules to further enhance clarity or whether separate rules for cable and satellite filings would be more appropriate. The Judges also seek comments on whether the proposed rules appropriately integrate references to eCRB. Finally, the Judges seek comment on the proposed new rules addressing the claim amendment, withdrawal, and reinstatement process. Are the proposed procedures reasonable and appropriate or would other procedures work better? If so, please specify those procedures and why they might be more appropriate than the ones the Judges propose. Are there procedures or other considerations not in the proposed claim amendment, withdrawal, and reinstatement process that the Judges should consider?

How to Submit Comments

Interested members of the public must submit comments to only **one** of the following addresses. If not commenting by email or online, commenters must submit an original of their comments, five paper copies, and an electronic version on a CD.

Email: crb@loc.gov; or

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

List of Subjects

37 CFR Part 350

Copyright Royalty Judges Rules and Procedures, General Administrative Provisions

37 CFR Part 360

Filing of Claims to Royalty Fees Collected Under Compulsory License

Proposed Regulations

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges propose to amend parts 350 and 360 of Title 37 of the Code of Federal Regulations as follows:

SUBCHAPTER B—Copyright Royalty Judges Rules and Procedures

PART 350—General Administrative Provisions

1. The authority citation for part 350 continues to read:

Authority: 17 U.S.C. 803.

2. In § 350.5 revise paragraph (c)(3) to read as follows:

§ 350.5 Electronic Filing System

(c) ***

(3) *Claimants.* Any person desiring to file a claim with the Copyright Royalty Board for copyright royalties may obtain an eCRB password for the limited purpose of filing claims by completing the application form available on the CRB website.

SUBCHAPTER C—SUBMISSION OF ROYALTY CLAIMS

PART 360—FILING OF CLAIMS TO ROYALTY FEES COLLECTED UNDER COMPULSORY LICENSE

3. Revise part 360 to read as follows:

Subpart A—Cable and Satellite Claims

Sec.

360.1 General.

360.2 Definitions.

360.3 Time of filing.

360.4 Form and content of claims.

360.5 Copies of claims.

Subpart B—Digital Audio Recording Devices and Media Royalty Claims

360.20 General.

360.21 Time of filing.

360.22 Form and content of claims.

360.23 Copies of claims.

360.24 Content of notices regarding independent administrators.

Subpart C—Rules of General Application

360.30 Amendment of Claims.

360.31 Withdrawal of Claims.

360.32 Reinstatement of Previously Withdrawn Claims.

Authority: 17 U.S.C. 801, 803, 805.

Subpart A also issued under 17 U.S.C. 111(d)(4) and 119(b)(4).

Subpart B also issued under 17 U.S.C. 1007(a)(1).

Subpart C also issued under 17 U.S.C. 111(d)(4), 119(b)(4) and 1007(a)(1).

Subpart A—Cable and Satellite Claims

§ 360.1 General.

This subpart prescribes procedures under 17 U.S.C. 111(d)(4)(A) and 17 U.S.C. 119(b)(4) whereby parties claiming entitlement to cable compulsory license royalty fees or satellite compulsory license royalty fees must file claims with the Copyright Royalty Board.

§ 360.2 Definitions.

For purposes of this subpart, the following definitions will apply:

Cable compulsory license royalty fees means royalty fees deposited with the Copyright Office pursuant to 17 U.S.C. 111.

Satellite compulsory license royalty fees means royalty fees deposited with the Copyright Office pursuant to 17 U.S.C. 119.

§ 360.3 Time of filing.

(a) During the month of July each year, any party claiming to be entitled to *cable compulsory license royalty fees* or *satellite compulsory license royalty fees* for secondary transmissions during the preceding calendar year must file a claim or claims with the Copyright Royalty Board. No party will receive royalty fees for secondary transmissions during the specified period unless the party has filed a timely claim to the fees. Claimants may file claims jointly or as a single claim. Claimants must file separate claims for *cable compulsory license royalty fees* and *satellite compulsory license royalty fees*. The Copyright Royalty Board will reject any claim that purports to be for both cable and satellite royalty fees.

(b) Claims filed with the Copyright Royalty Board will be considered timely filed only if they are filed online through eCRB or by mail or hand delivery in accordance with section 301.2 during the month of July, as determined in accordance with section 350.7.

(c) Notwithstanding paragraphs (a) and (b) of this section, in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the due date for claims to cable or satellite compulsory license royalty fees will be the first business day in August.

(d) In the event the Copyright Royalty Board does not receive a claim that was properly addressed and mailed, the filer may prove proper filing of the claim if it was sent by certified mail return receipt requested, and the filer produces a receipt bearing a July date stamp of the United States Postal Service. The Copyright Royalty Board will accept no other offer of proof in lieu of the return receipt.

(e) For claims filed electronically through eCRB, the Copyright Royalty Board will accept the confirmation email generated by eCRB as proof of filing. The Copyright Royalty Board will accept no other offer of proof regarding claims filed electronically through eCRB.

§ 360.4 Form and content of claims.

(a) *Forms.* (1) Each filer must use the form prescribed by the Copyright Royalty Board to claim *cable compulsory license royalty fees* or *satellite compulsory license royalty fees*, and must provide all information required by that form and its accompanying instructions.

(2) Copies of claim forms are available:

(i) On the Copyright Royalty Board Web site at <http://www.crb.gov/claims/> during the month of July for claims filed with the Copyright Royalty Board by mail or by hand delivery;

(ii) On the Copyright Royalty Board Web site at <http://www.loc.gov/cable/> (for cable claims) or <http://www.crb.gov/satellite/> (for satellite claims) during the month of July for claims filed online through eCRB; and

(iii) Upon request to the Copyright Royalty Board by mail at the address set forth in section 301.2(a), by email at the address set forth in section 301.2(d), or by telephone at (202) 707-7658.

(b) *Content*—(1) *Single claim.* A claim filed on behalf of a single copyright owner of a work or works secondarily transmitted by a cable system or satellite carrier must include the following information:

(i) The full legal name, address, and e-mail address of the copyright owner entitled to claim the royalty fees.

(ii) A general statement of the nature of the copyright owner's work(s), and identification of at least one secondary transmission by a cable system or satellite carrier, as the case may be, of one of the copyright owner's works establishing a basis for the claim.

(iii) The name, telephone number, full mailing address, and e-mail address of the person or entity filing the single claim. The information contained in a filer's eCRB profile shall fulfill this requirement for claims submitted through eCRB.

(iv) The name, telephone number, and e-mail address of the person whom the Copyright Royalty Board can contact regarding the claim.

(v) An original signature of the copyright owner or of a duly authorized representative of the copyright owner, except for claims filed online through eCRB.

(vi) A declaration of authority to file the claim and a certification of the veracity of the information contained in the claim and the good faith of the person signing in providing the information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(2) *Joint claim.* A claim filed on behalf of more than one copyright owner whose works have been secondarily transmitted by a cable system or satellite carrier must include the following information:

(i) With the exception of joint claims filed by a performing rights organization on behalf of its members, a list including the full legal name, address, and e-mail address of each copyright owner whose claim(s) are included in the joint claim. Claims filed online through eCRB must include an Excel spreadsheet containing the information if the number of joint claimants is in excess of ten. A performing rights organization is not required to list the name of each of its members or affiliates in the joint claim.

(ii) A concise statement of the authorization by each named claimant for the person or entity to file the joint claim. For this purpose, a performing rights organization shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliation agreements.

(iii) A general statement of the nature of the copyright owners' works, identification of at least one secondary transmission of one work by each identified copyright owner that has been secondarily transmitted by a cable system or satellite carrier establishing a basis for the joint claim.

(iv) The name, telephone number, full mailing address, and e-mail address of the person or entity filing the joint claim. The information contained in a filer's eCRB profile shall fulfill this requirement for claims submitted through eCRB.

(v) The name, telephone number, and e-mail address of a person whom the Copyright Royalty Board can contact regarding the claim.

(vi) Original signatures of the copyright owners identified on the joint claim or of a duly authorized representative or representatives of the copyright owners, except for claims filed online through eCRB.

(vii) Notwithstanding paragraph (b)(2)(ii) of this section, a declaration of authority to file the claim and a certification of the veracity of the information contained in the claim and the good faith of the person signing in providing the information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(c) In the event the legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim changes after the filing of the claim, the filer or the copyright owner shall notify the Copyright Royalty Board of the change. Any other proposed changes or amendments must be submitted in accordance with 37 CFR 360.30. If the good faith efforts of the Copyright Royalty Board to contact the copyright owner or filer are frustrated because of outdated or otherwise inaccurate contact information, the claim may be subject to dismissal. A person or entity that filed a claim online through eCRB must notify the Copyright Royalty Board of any change of name or address by updating the eCRB profile for that person or entity through eCRB as required by 37 CFR 350.5(g).

§ 360.5 Copies of claims.

Following the instructions outlined in 37 CFR 301.2, a claimant must file an original and one copy of the claim to cable or satellite compulsory license royalty fees at the address(es) listed for each claim submitted to the Copyright Royalty Board by hand delivery or by U.S. mail. .

Subpart B—Digital Audio Recording Devices and Media Royalty Claims

§ 360.20 General.

This subpart prescribes procedures whereby an *interested copyright party*, as defined in 17 U.S.C. 1001(7), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media (DART) pursuant to 17 U.S.C. 1006, shall file claims with the Copyright Royalty Board.

§ 360.21 Time of filing.

(a) *General.* During January and February of each year, every *interested copyright party* claiming to be entitled to DART royalty payments made for quarterly periods ending during the previous calendar year must file a claim with the Copyright Royalty Board. Claimants may file claims jointly or as a single claim.

(b) *Consequences of an untimely filing.* No royalty payments for the previous calendar year will be distributed to any *interested copyright party* who has not filed a claim to those royalty payments during January or February of the following calendar year.

(c) *Authorization.* Any organization or association acting as a common agent for collection and distribution of DART royalty fees must obtain from its members or affiliates separate, specific, and written authorization, signed by members, affiliates, or their representatives, apart from their standard affiliation agreements, for purposes of royalties claim filing and fee distribution relating

to the DART Musical Works Fund or Sound Recordings Fund. The written authorization, however, will not be required for claimants to the Musical Works Fund when either:

- (1) The agreement between the organization or association and its members or affiliates specifically authorizes the entity to represent its members or affiliates as a common agent before the Copyright Royalty Board in royalty claims filing and fee distribution proceedings; or
- (2) The agreement between the organization or association and its members or affiliates, as specified in a court order issued by a court with authority to interpret the terms of the contract, authorizes the entity to represent its members or affiliates as a common agent before the Copyright Royalty Board in royalty claims filing and fee distribution proceedings.

§ 360.22 Form and content of claims.

(a) *Forms.* (1) Each claim to DART royalty payments must be furnished on a form prescribed by the Copyright Royalty Board and must contain the information required by that form and its accompanying instructions.

(2) Copies of DART claim forms are available:

(i) On the Copyright Royalty Board's Web site at <http://www.crb.gov/claims> for claims filed with the Copyright Royalty Board by mail or by hand delivery;

(ii) On the Copyright Royalty Board's Web site at <http://www.crb.gov/dart/> during the months of January and February for claims filed online through eCRB; and

(iii) Upon request to the Copyright Royalty Board, by mail at the address set forth in section 301.2(a), by email at the address set forth in section 301.2(d), or by telephone at (202) 707-7658.

(b) *Content.* Claims filed by interested copyright parties for DART royalty payments must include the following information:

(1) The full legal name and address of the person or entity claiming royalty payments.

(2) The name, telephone number, full mailing address, and e-mail address of the person or entity filing the claim. The information contained in a filer's eCRB profile will fulfill this requirement for claims submitted through eCRB.

(3) The name, telephone number, and e-mail address of a person whom the Copyright Royalty Board can contact regarding the claim.

(4) A statement as to how the claimant fits within the definition of *interested copyright party*.

(5) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in 17 U.S.C. 1006(b), and as to which Subfund the claim is

made. The Subfunds for the Sound Recordings Fund are the copyright owners subfund and the featured recording artists subfund, The Subfunds for the Musical Works Fund are the music publishers subfund and the writers subfund, as described in 17 U.S.C. 1006(b)(1) through (2).

(6) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under title 17 of the United States Code that has been distributed (as that term is defined in 17 U.S.C. 1001(6)), and that, during the period to which the royalty payments claimed pertain, has been (i) Distributed (as that term is defined in 17 U.S.C. 1001(6)) in the form of digital musical recordings or analog musical recordings, or (ii) Disseminated to the public in transmissions.

(7) A declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing the information. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(c) Claims must bear the original signature of the claimant or of a duly authorized representative of the claimant, except for claims filed online through eCRB.

(d) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant must notify the Copyright Royalty Board of the change. Any other proposed changes or amendments must be submitted in accordance with 37 CFR 360.30. If the good faith efforts of the Copyright Royalty Board to contact the claimant are frustrated because of failure to notify the Copyright Royalty Board of a name and/or address change, the claim may be subject to dismissal. A person or entity that filed a claim online through eCRB must notify the Copyright Royalty Board of any change of name or address by updating that person or entity's eCRB profile as required by section 350.5(g).

(e) If the claim is a joint claim, it must include a concise statement of the authorization for the filing of the joint claim in addition to the declaration required under paragraph (b)(7) of this section and the name of each claimant to the joint claim.

(f) If an interested copyright party intends to file claims against more than one Subfund, each Subfund claim must be filed separately with the Copyright Royalty Board. The Copyright Royalty Board will reject any claim that purports to claim funds from more than one Subfund.

§ 360.23 Copies of claims.

Following the instructions outlined in 37 CFR 301.2, a claimant must file an original and one copy of the claim to cable or satellite compulsory license royalty fees at the address(es) listed for each claim submitted to the Copyright Royalty Board by hand delivery or by U.S. mail.

§ 360.24 Content of notices regarding independent administrators.

(a) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001(7)(A), and the American Federation of Musicians (or any successor entity) for the purpose of managing and ultimately distributing royalty payments to nonfeatured

musicians as defined in 17 U.S.C. 1006(b)(1), must file a notice informing the Copyright Royalty Board of his/her name and address.

(b) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) for the purpose of managing and ultimately distributing royalty payments to nonfeatured vocalists as defined in 17 U.S.C. 1006(b)(1), must file a notice informing the Copyright Royalty Board of his/her full name and address.

(c) A notice filed under paragraph (a) or (b) of this section must include the full name, telephone number, mailing address, and email address of the place of business of the independent administrator.

(d) The independent administrator must file the notices identified in paragraphs (a) and (b) of this section through eCRB no later than March 31 of each year, commencing with March 31, 2018.

Subpart C—Rules of General Application

§ 360.30 Amendment of Claims.

Any claimant may amend a filed claim as of right by filing a Notice of Amendment during the statutory period for filing annual claims. After the expiration of the time for filing claims, a claimant may amend a claim only by order of the Copyright Royalty Judges, on motion showing good cause and lack of prejudice to other claimants to the applicable year's royalty funds. No filer may amend a filed claim to add additional claimants after the expiration of the time for filing claims.

§ 360.31 Withdrawal of Claims.

Any claimant may withdraw its claim for any royalty year as of right by filing a Notice of Withdrawal of Claim(s). If a single claimant filed a Petition to Participate in a proceeding, withdrawal of the claim shall serve to dismiss the Petition to Participate. If the claimant withdrawing a claim was included on the Petition to Participate of another entity, withdrawal of the claim shall not affect the Petition to Participate as to other claims listed thereon.

§ 360.32 Reinstatement of Previously Withdrawn Claims.

Once a claimant has withdrawn a claim, that claim may be reinstated only by order of the Copyright Royalty Judges, on motion showing good cause and lack of prejudice to other claimants to the applicable year's royalty funds.

Dated: March 10, 2017.

Jesse M. Feder,
Copyright Royalty Judge.

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