

Signed in Washington, DC, this 20th day of July, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

[Docket No. 2005-2 CRB SD 2001-2003]

#### Distribution of the 2001, 2002, and 2003 Satellite Royalty Funds

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Request for comments.

**SUMMARY:** The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board, is requesting comments on the existence of controversies to the distribution of the 2001, 2002, and 2003 satellite royalty funds.

**DATES:** Written comments should be received no later than September 8, 2005.

**ADDRESSES:** If hand delivered by a private party, an original and five copies of comments must be brought to Room LM-401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), an original and five copies of comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due

to delays in processing receipt of such deliveries.

**FOR FURTHER INFORMATION CONTACT:**

William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** Each year satellite carriers submit royalties to the Copyright Office under the section 119 statutory license for the retransmission to their subscribers of distant over-the-air television broadcast signals. 17 U.S.C. 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air television broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Copyright Royalty Board may conduct a proceeding to determine the distribution of the royalties that remain in controversy. See 17 U.S.C. Chapter 8.

By Motion received on June 20, 2005, representatives of the Phase I claimant categories (the "Phase I Parties")<sup>1</sup> have asked the Board to authorize a partial distribution of 50% of each of the 2001, 2002, and 2003 satellite royalty funds, asserting that 50% of those funds is not in controversy. As set forth in the Motion, the proposed partial distribution would be preceded by a notice in the **Federal Register**, seeking comments with respect to the premise of the Motion that 50% of the relevant royalty funds is not in controversy. The Phase I Parties also indicated that, "in the event that the final percentage shares to Phase I Parties differ from the distributions made pursuant to this Motion, any overpayment that results from the final distribution shall be repaid \* \* \* with interest \* \* \*." Motion, at 4 (internal quotation and citation omitted).

In support of their Motion, the Phase I Parties invoked the Board's authority under Copyright Act sections 801(b)(3)(C) and 119(b)(4)(C). Because no distribution proceeding with respect to the 2001-2003 satellite funds was "pending," the Board was concerned that it might lack authority to act favorably on the requested 50% partial distribution. Accordingly, on July 1, 2005, the Board invited supplemental briefing from the Phase I Parties on this

<sup>1</sup> The "Phase I Parties" are the Program Suppliers, the Joint Sports Claimants, the Public Television Claimants, the Broadcaster Claimants Group, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., and the Devotional Claimants.

issue. In their supplemental brief, filed July 26, 2005, the Phase I Parties rely heavily on section 801(b)(3)(A). 17 U.S.C. 801(b)(3)(A), which was enacted as part of the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108-419, 118 Stat. 2341 (November 30, 2004), "authorize[s] the distribution" of satellite and other royalty funds "to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy." In arguing that section 801(b)(3)(A) should be construed to permit partial distributions prior to the formal initiation of distribution proceedings, the Phase I Parties point to the historic practices of the Copyright Royalty Tribunal and the Copyright Arbitration Royalty Panel system and demonstrate that Congress did not intend to alter that flexibility in adopting the current language of Copyright Act section 801(b)(3). After considering the arguments made by the Phase I Parties, the Board agrees with the Phase I Parties that section 801(b)(3)(A) should be construed to authorize the partial distribution of royalties not in controversy prior to the initiation of proceedings under sections 803(b)(1).

Accordingly, through this **Federal Register** notice, the Board is seeking comments on whether any controversy exists that would preclude the distribution of 50% of the satellite royalty funds to the Phase I Parties. If no controversy exists with respect to 50% of the funds, or no comments are received, the Board will grant the Phase I Parties' Motion for the partial distribution of the 2001-2003 satellite royalty funds, subject to the protective refund conditions required for partial distributions.

The Board also seeks comment on the existence and extent of any controversies to the 2001-2003 satellite royalty funds, either at Phase I or Phase II, with respect to the 50% of the 2001-2003 satellite royalty funds that would remain, if the partial distribution is granted. In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by satellite carriers. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music programming and Canadian programming. In Phase II of a satellite royalty distribution, royalties are distributed to claimants within each of the Phase I categories. Any party submitting comments on the existence

of a Phase II controversy must identify the category or categories in which there is a dispute, and the extent of the controversy or controversies.

The Board must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

Dated: August 4, 2005.

**Bruce G. Forrest,**

*Interim Chief Copyright Royalty Judge.*

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BILLING CODE 1410-72-P

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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 which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before September 23, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this

notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740-6001. E-mail: [requestschedule@nara.gov](mailto:requestschedule@nara.gov). FAX: 301-837-3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: 301-837-3120. E-mail: [records.mgt@nara.gov](mailto:records.mgt@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an

agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

### Schedules Pending (Note the New Address for Requesting Schedules Using E-Mail)

1. Department of Agriculture, National Agricultural Statistics Service (N1-355-05-1, 1 item, 1 temporary item). Completed 1998 Farm and Ranch Irrigation Survey questionnaires, which were used in a census sampling of farms and ranches in order to obtain irrigation data.

2. Department of the Army, Agency-wide (N1-AU-05-2, 2 items, 2 temporary items). Records relating to aviation accident prevention, including files relating to safety education, awards, and safety information sharing. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Air Force, Agency-wide (N1-AFU-03-16, 3 items, 3 temporary items). Litigation case files relating to such subjects as civilian employment discrimination, military promotions and benefits, Freedom of Information Act requests, contracts, environmental pollution, land use, and foreign civil matters. Also included are electronic copies of records created using electronic mail and word processing. This schedule provides ongoing disposal authority for this series. Records accumulated prior to ca. 1993 were previously approved for disposal.

4. Department of Defense, National Geospatial-Intelligence Agency (N1-537-04-2, 14 items, 9 temporary items). Imagery and intelligence program records accumulated by offices not responsible for the related programs or projects. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of such records as priority files, conference files, and publications as well as studies, requirements, plans, and project files