

**Before the  
United States Copyright Office  
Library of Congress  
Washington, D.C. 20559**

**In the Matter of**

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR EPHEMERAL RECORDING AND  
WEBCASTING DIGITAL PERFORMANCE OF  
SOUND RECORDINGS (Web IV)**

**Docket No. 14-CRB-0001-WR  
(2016-2020) (Web IV)**

**Order for Supplemental Briefing Concerning  
Novel Material Question of Substantive Law**

On September 11, 2015, pursuant to section 802(f)(1)(B) of the Copyright Act, the Copyright Royalty Judges (“Judges”) issued an order in the above-captioned proceeding (“Web IV”) to refer the following novel material question of substantive law to the Register of Copyrights for decision:

Does Section 114 of the Act (or any other applicable provision of the Act) prohibit the Judges from setting rates and terms that distinguish among different types or categories of licensors, assuming a factual basis in the evidentiary record before the Judges demonstrates such a distinction in the marketplace?

The order requested briefing on this question from proceeding participants, with initial briefs due on October 2, 2015, and responsive briefs due October 9, 2015. These briefs will be made available on the Copyright Office’s website at [www.copyright.gov/rulemaking/web-iv/](http://www.copyright.gov/rulemaking/web-iv/). The briefs were delivered to the Copyright Office by the Judges on October 14, 2015.

The Register of Copyrights invites participants in the Web IV proceeding to file supplemental briefs on three specific issues relating to the novel material question of substantive law, as set forth below. In addition, in light of the potential significance of the Register’s decision with respect to other statutory licenses, the Register invites other interested parties that are not participants in the Web IV proceeding to file briefs addressing the Judges’ referred question. The Register’s specific inquiries are as follows:

1. Is there any evidence in the legislative history of the 1909 Copyright Act, the 1976 Copyright Act, the Digital Performance Rights in Sound Recordings Act of 1995, the 1998 Digital Millennium Copyright Act, the Copyright Royalty and Distribution Reform Act of 2004, or any other legislation, of an intent by Congress to allow or disallow the establishment of rates and/or terms that distinguish among different types or categories of licensors?
2. How might the Register’s decision affect other statutory licenses, *e.g.*, the statutory license in section 115 for the making and distribution of phonorecords of nondramatic

musical works? How, if at all, should any such broader implications factor into the Register's analysis?

3. Are there administrative law or constitutional considerations (including rational basis or due process concerns) that would affect or should guide the Judges' ability to adopt rates and/or terms for the compensation of copyright owners, featured recording artists, and others for the use of sound recordings based on the identity of the licensor?

Briefs are limited to 15 pages, and must be submitted by email or delivered to the Copyright Office by October 26, 2015, in accordance with the below instructions. In light of the time constraints of the proceeding, no extensions of time can be granted. At this time, the Copyright Office does not anticipate holding a hearing on this matter. Please note that all briefs received will be posted publicly on the Copyright Office's website.

Briefs may be submitted as follows:

If hand delivered, the brief should be brought to Room LM-403 of the James Madison Memorial Building, 101 Independence Avenue SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be labeled: "Attention: Office of the General Counsel, Room LM-403 – Web IV Proceeding."

If by email, please send the brief to Steve Ruwe, at [sruwe@loc.gov](mailto:sruwe@loc.gov).

Questions about the submission process may be directed to Mr. Ruwe at the above email address.

October 14, 2015



Maria A. Pallante  
Register of Copyrights