

marketplace value. If arbitrations are surrogates for marketplace value at all, it is only because they become necessary where the market has failed—i.e. the buyer and seller are unable to negotiate the compensation paid. BMI's distribution methodology represents a consensus approach endorsed by thousands of BMI's songwriter and music publisher members. While there are undoubtedly disgruntled BMI members who feel, like Cannings, that the compensation paid is too low, this is not conclusive evidence that BMI's distribution methodology is not probative evidence of the market value of cable retransmissions of musical works. The Panel was well within its discretion to credit BMI's distribution methodology and adopt its approach.

With respect to Cannings' allegations of racial bias and discrimination, Cannings has offered no evidence in support of these contentions, and the Register cannot find any evidence in the record suggesting bias or discriminatory action. Cannings' charge of "impetuous" behavior on the part of the Chairman of the Panel towards him during the pre-hearing conference neither proves nor suggests improper behavior, and there is no supportable reason for overturning the decision of the Panel on these grounds. If anything, the Panel was exceedingly flexible and accommodating in allowing Cannings to make his case in this proceeding.

In summary, the Register determines that the Panel did not act arbitrarily or contrary to the Copyright Act in valuing Cannings' Phase II claim at \$63.74, and recommends that the Librarian adopt this determination.

## 2. Interest on Cannings' Award

Cannings requested that he be awarded interest on his claim, calculated from deposit of the 1991 cable royalties. Music Claimants assert that Cannings is not entitled to interest. The Panel did not award interest because it could not find any Copyright Royalty Tribunal precedent for doing so, and it could not find any "supportable method to award or compute interest." Panel Report at 21.

The Register determines that it was reasonable for the Panel not to award Cannings interest on his claim. Under Tribunal precedent, copyright owners were not entitled to a distribution of royalties, or any interest that had accrued on those royalties, until the Tribunal affirmatively determined their entitlement. See 50 FR 6028 (February 13, 1985) (1979-82 cable distribution) (Tribunal not "responsible for time value lost on an allocation which had not yet been determined"); 53 FR 7132

(March 4, 1988) (1985 Phase II cable distribution) (no interest given on dollar award to Asociacion de Compositores y Editores de Musica Latinoamericana). Consequently, there are no established grounds or methodology for awarding interest. Because there is no requirement that the Panel assess interest in this proceeding, the Register cannot conclude that the Panel acted arbitrarily or contrary to the Copyright Act by not awarding Cannings interest on his claim.

## 3. Award to Cannings

By Order dated August 3, 1995, the Copyright Office distributed the full amount of the music category's Phase I entitlement (4.5% of the total 1991 cable royalties) to the Music Claimants. Order in Docket No. 94-3 CARP CD 90-92). As a result, there were no funds retained to satisfy any Phase II award against the Music Claimants' royalties. However, the Order required reimbursement should an overpayment of royalties occur. The Music Claimants were overpaid \$63.74, the amount of Cannings' award. The Register recommends that, in affirming the Panel's award, the Librarian order Music Claimants to pay Cannings \$63.74 in satisfaction of his claim.

## V. Order of the Librarian

Having duly considered the recommendation of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter of the Phase II controversy for the distribution of 1991 cable royalty fees, 17 U.S.C. 111, the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's determination. The Librarian also dismisses the "supplemental reply" of BMI as untimely.

The Librarian orders that Music Claimants submit payment to James Cannings in the amount of \$63.74, no later than May 15, 1998.

Dated: April 20, 1998.

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (98-057)]

### Proposed Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)). The reports will be utilized by the Office of Small and Disadvantaged Business Utilization as a method for determining if developmental assistance provided to small disadvantaged businesses by prime contractor's performance meets the standards established in NASA policy. The Agency's ability to manage the program effectively would be greatly diminished without receiving the described reports, which are part of the ongoing performance fee evaluation process.

**DATES:** All comments should be submitted on or before June 23, 1998.

**ADDRESSES:** All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546-0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, NASA Reports Officer, (202) 358-1223.

*Title:* Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions NASA FAR Supplement Part 18-19, SF 295.

*OMB Number:* 2700-0073.

*Type of review:* Extension.

*Need and Uses:* NASA requires reporting of small disadvantaged business subcontract awards in order to meet its Congressionally mandated goals.

*Affected Public:* Not-for-profit institutions.

*Number of Respondents:* 225.

*Responses Per Respondents:* 2.

*Annual Responses:* 450.

*Hours Per Request:* 13.

*Annual Burden Hours:* 5,850.

*Frequency of Report:* Biannually.

**Eva L. Layne,**

*Office of the Chief Information Officer.*

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