AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

e-mail address (if any) of the person filing the petition;

(B) A list identifying all participants to the joint petition;

(C) In a cable or satellite royalty distribution proceeding, identification of whether the petition covers a Phase I proceeding (the initial part of a distribution proceeding where royalties are divided among the categories or groups of copyright owners), a Phase II proceeding (where the money allotted to each category is subdivided among the various copyright owners within that category), or both;

(D) A description of the participants' significant interest in the subject matter of the proceeding; and

(E) If the joint petition is filed by counsel or a representative of one or more of the participants that are named in the joint petition, a statement from such counsel or representative certifying that, as of the date of submission of the joint petition, such counsel or representative has the authority and consent of the participants to represent them in the royalty distribution proceeding.

(3) *Filing deadline.* A petition to participate shall be filed by no later than 30 days after the publication of the notice of commencement of a proceeding, subject to the qualified exception set forth in paragraph (d) of this section.

(4) *Filing fee.* A petition to participate must be accompanied with a filing fee of $150 or the petition will be rejected. Payment shall be made to the Copyright Royalty Board. If a check is subsequently dishonored, the petition will be rejected. If the petitioner believes that the contested amount of that petitioner's claim will be $10,000 or less, petitioner shall so state in the petition to participate and should not include payment of the $150 filing fee. If it becomes apparent during the course of the proceedings that the contested amount of the claim is more than $10,000, the Copyright Royalty Judges will require payment of the filing fee at such time.

(c) *Acceptance and rejection of petitions to participate.* A petition to participate will be deemed to have been allowed by the Copyright Royalty Judges unless the Copyright Royalty Judges determine the petitioner lacks a significant interest in the proceeding or the petition is otherwise invalid.

(d) *Late petitions to participate.* The Copyright Royalty Judges may, for substantial good cause shown, and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. However, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53327, Sept. 11, 2006]

§ 351.2 Voluntary negotiation period; settlement.

(a) *Commencement; duration.* After the date for filing petitions to participate in a proceeding, the Copyright Royalty Judges will announce the beginning of a voluntary negotiation period and will make a list of the participants available to the participants in the particular proceeding. The voluntary negotiation period shall last three months, after which the parties shall notify the Copyright Royalty Judges in writing as to whether a settlement has been reached.

(b) *Settlement*—(1) *Distribution proceedings.* Pursuant to 17 U.S.C. 801(b)(7)(A), to the extent that a settlement has been reached in a distribution proceeding, that agreement will provide the basis for the distribution.

(2) *Royalty rate proceedings.* If, in a proceeding to determine statutory terms and rates, the participating parties report that a settlement has been reached by some or all of the parties, the Copyright Royalty Judges, pursuant to 17 U.S.C. 801(b)(7)(A), will publish the settlement in the FEDERAL REGISTER for notice and comment from those bound by the terms, rates, or other determination set by the agreement. If an objection to the adoption of an agreement is filed, the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement if the

Copyright Royalty Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53328, Sept. 11, 2006]

§ 351.3 Controversy and further proceedings.

(a) *Declaration of controversy.* If a settlement has not been reached within the voluntary negotiation period, the Copyright Royalty Judges will issue an order declaring that further proceedings are necessary. The procedures set forth at §§ 351.5, *et seq.*, for formal hearings will apply, unless the abbreviated procedures set forth in paragraphs (b) and (c) of this section are invoked by the Copyright Royalty Judges.

(b) *Small claims in distribution proceedings*—(1) *General.* If, in a distribution proceeding, the contested amount of a claim is $10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by each participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement.

(2) *Bad faith inflation of claim.* If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of $10,000 for the purpose of avoiding a determination under the procedure set forth in paragraph (b)(1) of this section, the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

(c) *Paper proceedings*—(1) *Standard.* The procedure under this paragraph (c) will be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure. In the absence of an agreement in writing among all participants, this procedure may be applied by the Copyright Royalty Judges either on the motion of a party or by the Copyright Royalty Judges *sua sponte.*

(2) *Procedure.* Paper proceedings will be decided on the basis of the filing of the written direct statement by the participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53328, Sept. 11, 2006]

§ 351.4 Written direct statements.

(a) *Required filing; deadline.* All parties who have filed a petition to participate in the hearing must file a written direct statement. The deadline for the filing of the written direct statement will be specified by the Copyright Royalty Judges, not earlier than 4 months, nor later than 5 months, after the end of the voluntary negotiation period set forth in § 351.2.

(b) *Required content*—(1) *Testimony.* The written direct statement shall include all testimony, including each witness's background and qualifications, along with all the exhibits.

(2) *Designated past records and testimony.* Each participating party may designate a portion of past records, including records of the Copyright Royalty Tribunal or Copyright Arbitration Royalty Panels, that it wants included in its direct statement. If a party intends to rely on any part of the testimony of a witness in a prior proceeding, the complete testimony of that witness (*i.e.*, direct, cross and redirect examination) must be designated. The party submitting such past records and/or testimony shall include a copy with the written direct statement.

(3) *Claim.* In the case of a royalty distribution proceeding, each party must state in the written direct statement its percentage or dollar claim to the fund. In the case of a rate (or rates) proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law.

(c) *Amended written direct statements.* A participant in a proceeding may amend a written direct statement based on new information received during the discovery process, within 15