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- (2) A "listed arbitrator" is a person named in the "arbitration list" published in accordance with § 251.3 of these regulations.

(b) General principles applicable to arbitrators. Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall apply these principles where applicable.

- (1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.
- (2) Arbitrators shall not hold financial interests that conflict with the conscientious performance of their service.
- (3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.
- (4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).
- (5) Arbitrators shall put forth their honest efforts in the performance of their service.
- (6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.
- (7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.
- (8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.
- (9) Arbitrators shall maintain order and decorum in the proceedings, be patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

**37 CFR 251.31 Financial interests.**

- (a) No selected arbitrator shall have a direct or indirect financial interest-

- (1) in the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;
- (2) in the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

- (c) "Direct or indirect financial interest" shall not include-

- (1) owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or
- (2) receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interests of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

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- (1) The arbitrator's spouse;
- (2) The arbitrator's minor child;
- (3) The arbitrator's general partner, except that the personal financial holdings, including stock and bond investments, of such partner will not serve to disqualify the selected arbitrator; or
- (4) An organization or entity for which the arbitrator serves as officer, director, trustee, general partner or employee.

**37 CFR 251.32 Financial disclosure statement.**

(a) Each year, within one month of publication in the Federal Register of the list of available arbitrators, each listed arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.31.

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except-

- (1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or
- (2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:
  - (i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of § 251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;
  - (ii) Such list shall be published in the order establishing the period for precontroversy motions (see, § 251.45(b));
  - (iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.
  - (iv) Any party to the proceeding for which the listed arbitrator is being considered may interpose within the 45-day period described in § 251.45(b) an objection to that arbitrator being selected.

If the objection is raised to a matter found to be within the scope of § 251.31, the objection will serve automatically to disqualify the arbitrator. If the objection is raised to a matter found to be outside the scope of § 251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP panel, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are any changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of § 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest-

- (1) during the period beginning with the filing of the updated disclosure form or

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statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

- (2) if the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

**37 CFR 251.33. Ex parte communications.**

(a) **Communications with Librarian or Register.** No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) **Selected arbitrators.** No interested person shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange of pleasantries, shall not be deemed to constitute an ex parte communication.

(c) **Listed arbitrators.** No interested person shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as an arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) **Library and Copyright Office personnel.** No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) **Outside contacts.** The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) **Responsibilities of recipients of communication**

- (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding:
- (i) all such written or recorded communications;
  - (ii) memoranda stating the substance of all such oral communications; and
  - (iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.
- (2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) **Action by Librarian.** When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause

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why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

**37 CFR 251.34 Gifts and other things of monetary value.**

(a) Selected arbitrators. From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) Listed arbitrators. No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except-

- (1) a listed arbitrator may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed \$50 in a calendar year, or
- (2) a listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift-

- (1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or
- (2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

**37 CFR 251.35 Outside employment and other activities.**

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall-

- (1) engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;
- (2) accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or
- (3) accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments-

- (1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or
- (2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

**37 CFR 251.36 Pre-arbitration and post-arbitration employment restrictions.**

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or

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her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

**37 CFR 251.37 Use of nonpublic information.**

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner-

- (1) intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;
- (2) draft interlocutory rulings or draft decisions; or
- (3) the CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

**37 CFR 251.38 Billing and commitment to standards.**

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under § 251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, for travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under § 251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress, arbitrators shall perform their own work, including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

**37 CFR 251.39 Remedies.**

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following-

(a) in the case of a selected arbitrator,

- (1) removal of the arbitrator from the proceeding;
- (2) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

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- (3) referral of the matter to the bar of which the arbitrator is a member.
- (b) In the case of a listed but not selected arbitrator-
  - (1) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;
  - (2) referral of the matter to the bar of which the listed arbitrator is a member.
- (c) In the case of an interested party or individual who engaged in the ethical violation-
  - (1) referral of the matter to the bar or professional association of which the interested individual is a member;
  - (2) barring the offending individual from current and/or future appearances before the CARP;
  - (3) designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.
- (d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

**SUBPART E-PROCEDURES OF COPYRIGHT ARBITRATION  
ROYALTY PANELS**

**37 CFR 251.40 Scope.**

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under 17 U.S.C. 803 for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

**37 CFR 251.41 Formal hearings.**

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of § 251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the 45-day period specified in § 251.45(b)(1)(i) for distribution proceedings, or during the 45-day period specified in § 251.45(b)(2)(i) for rate adjustment proceedings, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP decide the controversy or rate adjustment on the basis of written pleadings. The petition may be granted if-

- (1) The controversy or rate adjustment, as appropriate, does not involve any genuine issue of material fact; or
- (2) All parties to the proceeding agree, in writing, that a grant of the petition is appropriate.

**37 CFR 251.42 Suspension or waiver of rules.**

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

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(a) All parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Arbitration Royalty Panel, and with other parties in the manner in which the Librarian of Congress shall direct in accordance with § 251.45(b).

(b) The written direct case shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment 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 the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP panel has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

**37 CFR 251.44 Filing and service of written cases and pleadings.**

(a) Copies filed with a Copyright Arbitration Royalty Panel. In all filings with a Copyright Arbitration Royalty Panel, the submitting party shall deliver, in such a fashion as the panel shall direct, an original and three copies to the panel. The submitting party shall also deliver one copy to the Copyright Office at the address listed in § 251.1. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, a CARP may reduce the number of copies required by the panel, but a complete copy must still be submitted to the Copyright Office. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) Copies filed with the Librarian of Congress. In all pleadings filed with the Librarian of Congress, the submitting party shall deliver an original and five copies to the Copyright Office. In no case shall a party tender any pleading by facsimile transmission.

(c) English language translations. In all filings with a CARP or the Librarian of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) Affidavits. The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) Subscription and verification

- (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay.
- (2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone

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number.

- (3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) **Service.** The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings with a CARP or the Librarian of Congress, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the CARP panel or the Copyright Office. If a party files a pleading that requests or would require action by the panel or the Librarian within 10 or fewer days after the filing, it must serve the pleading upon all other counsel or parties by means no slower than overnight express mail on the same day the pleading is filed. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP panel.

(g) **Oppositions and replies.** Except as otherwise provided in these rules or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within ten business days of the date of service of the motion, and replies to oppositions shall be filed within five business days of the date of service of the opposition. The date of service shall be deemed to be the third business day following service by mail or the next business day following service by overnight delivery, by hand, or by facsimile.

**37 CFR 251.45 Discovery and prehearing motions.**

(a) **Request for comment, notice of intention to participate.** In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the Federal Register a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. In the case of a rate adjustment proceeding, the Librarian of Congress shall, after receiving a petition for rate adjustment filed under § 251.62, or, in the case of noncommercial educational broadcasting and satellite carrier, prior to the commencement of proceedings, publish in the Federal Register a notice requesting interested parties to comment on the petition for rate adjustment. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

(b) **Precontroversy discovery, filing of written cases, scheduling.**

- (1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must serve a complete copy of its written direct case on each of the parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, parties to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b), and objections to arbitrators appearing on the arbitrator list under § 251.4. Replies to motions, petitions, and objections must be filed with the Librarian seven days from the filing of such motions, petitions, and objections with the Librarian.

(ii) Subject to § 251.72, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

- (2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section,