



1410-72-P

**LIBRARY OF CONGRESS**

**Copyright Royalty Board**

**37 CFR Parts 301, 350 and 351**

**[Docket No. 16-CRB-0015 -RM]**

**Procedural Regulations for the Copyright Royalty Board: Organization, General Administrative Provisions**

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

**ACTION:** Final rule.

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**SUMMARY:** The Copyright Royalty Judges are amending and augmenting procedural regulations governing the filing and delivery of documents to allow for electronic filing of documents.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kimberly Whittle, Attorney Advisor, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On November 23, 2016, the Copyright Royalty Judges (Judges) published a proposed rule in the **Federal Register** seeking comments on proposed amendments relating to an automated system, designated “eCRB.” The rules address electronic filing of documents and related matters such as the form and content of documents that are filed with the Judges.<sup>1</sup> The

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<sup>1</sup> See 81 FR 84526.

Judges received comments from the following interested parties: the Commercial Television Claimants (CTV);<sup>2</sup> Independent Producers Group and Multigroup Claimants (IPG); Joint Sports Claimants (JSC);<sup>3</sup> the Music Community Participants (Music Community);<sup>4</sup> the Performing Rights Organizations (Music PROs);<sup>5</sup> the Program Suppliers;<sup>6</sup> and the Settling Devotional Claimants (SDC).<sup>7</sup> All interested parties supported the Judges' decision to implement an electronic filing system and to adopt rules concerning the use of that system, though most recommended some changes to the proposed rules.

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<sup>2</sup> CTV does not identify its constituent members in its comments. In a Petition to Participate filed in a recent cable distribution proceeding, CTV is identified as "U.S. commercial television broadcast stations" represented by the National Association of Broadcasters, through its counsel (the same counsel that prepared the CTV Comments). *See Joint Petition to Participate of the National Association of Broadcasters* at 1, Docket No. 14-CB-0010-CD (2013). The Judges assume that "CTV" denominates the same or a similar group of entities in this rulemaking. It would have assisted the Judges and provided a more complete record if the CTV Comments had identified CTV and its interest in this rulemaking.

<sup>3</sup> The JSC is comprised of Office of the Commissioner of Baseball, National Football League, National Basketball Association, Women's National Basketball Association, National Hockey League, and the National Collegiate Athletic Association. The JSC did not comment on any specific provisions, merely noting that they "have no objection or suggested revisions to the proposed rules." Comments of the Joint Sports Claimants at 1.

<sup>4</sup> The Music Community Participants consist of SoundExchange, Inc., the Recording Industry Association of America, Inc., the American Association of Independent Music, the American Federation of Musicians of the United States and Canada, The Screen Actors Guild—American Federation of Television and Radio Artists, and the National Music Publishers' Association.

<sup>5</sup> The Music PROs consist of Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, and SESAC, Inc.

<sup>6</sup> The Program Suppliers are comprised of The Motion Picture Association of America, Inc., its member companies and "other producers and/or syndicators of syndicated movies, series, specials, and non-team sports broadcast by television stations." Program Suppliers Comments at 1.

<sup>7</sup> The Settling Devotional Claimants are comprised of: Amazing Facts, Inc., American Religious Town Hall Meeting, Inc., Catholic Communications Corporation, Christian Television Network, Inc., The Christian Broadcasting Network, Inc., Coral Ridge Ministries Media, Inc., Cornerstone Television, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Inc., Family Worship Center Church, Inc. (D/B/A Jimmy Swaggart Ministries), Free Chapel Worship Center, Inc., In Touch Ministries, Inc., It Is Written, Inc., John Hagee Ministries, Inc. (aka Global Evangelism Television), Joyce Meyer Ministries, Inc. (F/K/A Life In The Word, Inc.), Kerry Shook Ministries (aka Fellowship of the Woodlands), Lakewood Church (aka Joel Osteen Ministries), Liberty Broadcasting Network, Inc., Living Word Christian Center, Living Church of God (International), Inc., Messianic Vision, Inc., New Psalmist Baptist Church, Oral Robe1is Evangelistic Association, Inc., Philadelphia Church of God, Inc., RBC Ministries, Rhema Bible Church (aka Kenneth Hagin Ministries), Ron Phillips Ministries, St. Ann's Media, The Potter's House Of Dallas, Inc. (d/b/a T.D. Jakes Ministries), Word of God Fellowship, Inc., d/b/a Daystar Television Network, Billy Graham Evangelistic Association, and Zola Levitt Ministries. SDC Comments at 1 n.1.

## II. Comments on Proposed Rules and Judges' Findings

The Judges address the comments on a section-by-section basis. The Judges will adopt without change those sections that no interested party commented on.<sup>8</sup>

### **Section 350.3(a)(1): Format—Caption and Description**

The Music Community recommended that the proposed rule be modified so that filers would not be required to put a footer on the first page of a filed document, noting that the first page includes a caption that conveys the same information that would be in the footer.

Comments of the Music Community Participants (Music Community Comments) at 9. The Judges find this recommendation to be reasonable and will adopt it in the final rule.

Commenter Music PROs recommended that the requirement for a footer be eliminated from the rules. In the view of the Music PROs, eCRB should be designed to add a footer automatically. Comments of Performing Rights Organizations (Music PRO Comments) at 2-3.

eCRB will add a stamp to the first page of each filed document that includes, *inter alia*, the date and time the document was filed. It will not add a footer to each page, however. While the Judges may revisit this design choice in a future revision of the system, filers will be required to add footers to their documents for the time being. The Judges note that the burden of adding footers to documents created in a word processing program is minimal. However, the Music PROs' concern is well-taken that adding footers to some document exhibits (*e.g.*, exhibits that are reproductions of paper documents) might not be technologically feasible. The Judges will

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<sup>8</sup> The Judges received no comments on proposed sections 301.2, 350.1, 350.2, 350.3(a)(3), 350.3(b)(1), 350.3(b)(4), 350.3(b)(7), 350.5(b), 350.5(d), 350.5(e), 350.5(f), 350.5(g), 350.6(d), 350.6(e), 350.7(a), 350.7(b), and 350.8.

adopt language limiting the application of the requirement for including footers on exhibits to the extent it is technologically feasible to do so using software available to the general public.

**Section 350.3(a)(2): Format—Page Layout**

The Music PROs object to this provision’s requirement that exhibits or attachments to documents reflect the docket number of the proceeding and that the pages are numbered appropriately, opining that “[m]ost if not all electronic filing systems automatically create a legend on each page of a filed document . . .” Music PRO Comments at 3. eCRB will not create a legend on each page of a filed document. Consequently, the Judges will retain the requirement in the final rule. As discussed above, however, the Judges recognize that in certain instances (*e.g.*, when attachments or exhibits are reproductions of paper documents) there may be technological impediments to adding footers to an attachment or exhibit.<sup>9</sup> The Judges will, therefore, modify the final rule to limit the application of the requirement for including footers on attachments or exhibits to the extent it is technologically feasible to do so using readily available software.

The Music Community raised a similar concern about adding footers to “exhibits in non-traditional formats” such as non-PDF files, and recommended that the Judges adopt an exception. Music Community Comments at 9. The Judges acknowledge this concern, and believe that it is addressed by the modification to this provision that the Music PROs proposed and the Judges adopted.

It has also come to the Judges’ attention that the phrase “clear black image” in this section may cause confusion in light of the requirement in section 350.3(b)(5) to scan exhibits in

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<sup>9</sup> The Judges note that Adobe Acrobat software permits users to add headers and footers to scanned PDF documents, and permits users to shrink the document to avoid overwriting the document’s text and graphics.

color. The Judges have modified the provision to clarify that, as with electronic copies of exhibits, any document that uses color to convey information or enhance readability must be reproduced in color.

### **Section 350.3(b)(2): File Type for Electronic Filings**

As proposed, section 350.3(b)(2) requires all pleadings and documents to be filed in Portable Document Format (PDF), with the exception of proposed orders. The proposed rule also permits filers to provide certain documents in their native electronic formats.

The Music Community noted that it is unclear whether the second two sentences of this section are intended to be exceptions from the requirement for PDF files, or to permit filers to provide native files in addition to PDF versions of those files. *See id.* at 10. They pointed out that, for audio and video files, conversion to PDF is impossible. *See id.* In addition, the Music Community expressed concern that the proposed language would prohibit filers from providing the Copyright Royalty Board with the full range of electronic materials that could potentially be provided as exhibits in future filings. *See id.* They recommend revising the proposed section “to extend it to the full range of file types that cannot usefully be provided in PDF format and to state clearly that such files do not need to be delivered in PDF format.” *Id.*

The Judges’ intent in drafting the proposed provision was to require filers to convert to the PDF file format any document that can be converted legibly, and to give filers the option of also providing those documents in their native format if doing so would assist the Judges. The Judges also intended to exclude from the requirement for PDF files those files (such as audio and audiovisual files) that cannot be converted to PDF.

The Judges agree with Music Community that the proposed provision requires clarification as to when filing documents in their native form is to be in lieu of, or in addition to filing a PDF file. The Judges have modified the final rule accordingly.<sup>10</sup>

In addition, the Judges recognize that it would be helpful to filers if the provision gave guidance as to which specific file formats the system is able to accept. However, this is likely to change over time as technology progresses. Consequently, apart from PDF and Word format, the regulations will not specify particular file types, and will refer to “audio,” “video,” and similar generic file formats. While the system will accept a wide variety of file formats as exhibits to pleadings or as hearing exhibits, the Judges caution that they might not have software to render and view all file types.

The Program Suppliers noted that the rule should provide guidance to filers as to the maximum file size that the eCRB system can accept. *See* Program Suppliers Comments at 2. The Judges agree with this comment and, after consulting with the system developers, have modified section 350.3(b)(2) to include a maximum allowable file size. The Judges note, however, that this provision does not override any applicable page or word limit. Nor is this a guarantee that filers will be able to upload files at or near the maximum allowable file size, given the multitude of factors that may affect a transmission across the Internet before it is received by eCRB.

The Program Suppliers also noted that proposed section 350.3(b)(2) does not “provide guidance as to whether exhibits and attachments must be submitted as filings separate from the principal document. *Id.* The eCRB system will be able to accept multiple files (*e.g.*, a motion

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<sup>10</sup> As a result of this change, section 350.3(b)(4) through (8) have been redesignated as section 350.3(b)(5) through (9). The narrative will continue to refer to the paragraph numbers in the proposed rule in order to correspond to the paragraph numbers in the comments.

and exhibits) in a single filing. As the system is currently under development, the Judges can provide no further detail at this time. The eCRB documentation will provide further details about the filing process, and the Judges will supplement that information, either with informal guidance posted on the CRB website, or additional regulations, as the need arises.

### **Section 350.3(b)(3): Proposed Orders**

Proposed section 350.3(b)(3) requires parties filing or responding to motions to provide a proposed order as a Word document. The Settling Devotional Claimants (SDC) suggest that, as to a party responding to a motion, the requirement be limited to cases where the responding party is seeking alternative relief, rather than merely seeking denial of the motion. Comments of the Settling Devotional Claimants (SDC Comments) at 2. IPG recommend that the requirement for a proposed order be dispensed with entirely. Comments of Independent Producers Group and Multigroup Claimants (IPG Comments) at 1. IPG argues that “more often than not it is impossible to anticipate what the adjudicating entity will want the final order to say with specificity.” *Id.*

The Judges find a party’s proposed order to be a useful starting point for drafting an order, even in circumstances in which the Judges’ resolution of the motion is not precisely what the moving party or the responding party anticipated. Consequently, the Judges will retain the requirement for a moving party to file a proposed order in the final rule. The Judges agree with the SDC that there is little utility in a proposed order that merely denies the relief sought by the moving party. The Judges have modified this provision to require responding parties to file a proposed order when they seek alternative relief, and have relocated the requirement to section 350.4.

### **Section 350.3(b)(5): Scanned Exhibits**

Proposed section 305.3(b)(5) seeks to ensure that scanned exhibits are as useful as possible to the Judges by requiring that (1) they are scanned at an appropriate resolution; (2) they are rendered searchable; and (3) any exhibits that use color to convey information are scanned in color. The Music PROs expressed concern that rendering scanned exhibits searchable is not always technically feasible. *See* PRO Comments at 3. Noting the difficulties that a filer might encounter when, for example, an original contains text that is too small or too blurred to be “read” by optical character recognition (OCR) software, the Music PROs find that “an unqualified requirement that all scanned documents be ‘searchable’ poses a technical challenge and places parties at risk of violating the rules if a given document cannot readily be made searchable.” *Id.* at 3-4. The Music PROs recommend limiting the requirement “to the extent technologically feasible through software programs available to the general public.” *Id.* No other commenter commented on this provision.

The Judges find that the Music PROs’ concern is unfounded. The Judges recognize that OCR software is not perfect, and that it might do a poor job of extracting text from certain documents. The draft provision does not require perfection; it does, however, require that filers use OCR functionality that is available to them to render searchable any text that it is capable of rendering. OCR functionality is broadly available, either as stand-alone applications, built into commercially-available software for creating and editing PDF files, or embedded into scanner/copier hardware. Nevertheless, it has been the Judges’ experience that parties frequently submit scanned documents without processing them through OCR software, shifting the burden onto the Judges and their staff to process the documents into a usable form. The proposed provision is intended to end this practice. The Judges will adopt the provision as drafted.

### **Section 350.3(b)(6): Bookmarks**

The Music PROs objected to this provision's requirement that electronic documents include bookmarks as an "unwarranted" burden. *Id.* at 4. They recommend that the proposed rule be eliminated or limited to documents exceeding 20 pages in length. No other commenter objected to this provision.

As with the other provisions of proposed section 350.3(b), proposed section 350.3(b)(6) seeks to ensure that documents submitted to the CRB in electronic form are at least as useful as their paper equivalents. It was proposed to address problems that the Judges frequently have encountered in the past. Electronic documents that contain no bookmarks are more difficult to navigate—particularly when accessed on a mobile device from the bench. The Judges find the Music PROs objection concerning "burden" to be outweighed by the Judges' need for useful electronic documents. The Judges will adopt the proposed rule as drafted.

### **Section 350.3(b)(8): Signature**

The Music Community expressed concern that this proposed rule, together with proposed sections 350.5(d) and (e), is undesirable from the perspective of information security. *See* Music Community Comments at 10-11. These three provisions address the issue of how counsel must sign documents they submit using eCRB. Section 350.3(b)(8) eliminates the need for a manual (*i.e.*, "wet") signature on an electronically-filed document. Instead, the document must bear a signature line identifying the person responsible for signing the document, and that name must match the name of the person whose eCRB account is used to file the document. Section 350.5(e) specifies that logging onto an eCRB account and submitting a document constitutes the signature of the account holder (*i.e.*, the person to whom the eCRB login password was assigned) and imposes on the account holder the ethical obligations associated with his or her signature.

Section 350.5(d) states the general rule that only the account holder may log in to his or her account. It creates an exception, however, that permits an attorney to authorize another employee or agent of the attorney's law firm to use his or her password to log in and file documents. That provision further states that the account holder remains responsible for any documents filed using that account.

The Music Community correctly discerned that the purpose of the exception in section 350.5(d) is to accommodate the practice in some firms of requiring the responsible partner to sign litigation documents, while delegating the task of carrying out the electronic filing to others within the firm. *See id.* While the Music Community supports this accommodation, they “believe it would be preferable to issue eCRB passwords liberally to persons associated with a firm appearing in a proceeding, and allow filings to be uploaded by an eCRB user other than the signing attorney, so long as the signer and uploader are part of the same firm.” *Id.* at 11.

Sections 350.3(b)(8), 350.5(d) and 350.5(e) seek to address two aspects of the issue of signatures on electronic documents: ready identification of the responsible party, and a manifestation of the responsible party's consent to filing the document. The Music Community's recommendation addresses the first aspect, but not the second. Their proposal would identify the responsible party on the signature line of the document. But an entirely different person would manifest his or her consent to the filing by using a separate account and password.

The Judges find that the provision as proposed strikes an appropriate balance among information security needs, the Judges' requirement for a manifestation of assent by the responsible party, and the flexibility that law firms desire. With one exception, the Judges will adopt these provisions as proposed.

In the course of developing the eCRB system it has come to the Judges' attention that, by placing a "filed" stamp on the first page of a filed document, the system will alter the document and thus invalidate any verifiable digital signature. Consequently, the Judges have deleted the final sentence of proposed section 350.3(b)(8), which would have permitted parties to sign documents with a verifiable electronic signature if they had the capability of doing so.

### **Section 350.3(c): Length of Submissions**

The SDC, IPG, the Music PROs, and the Program Suppliers all commented on the Judges' proposal to impose page limits on parties filing motions, responses, and replies. IPG opposed the proposal, arguing that "strict page limits present a problem when dealing with certain levels of complexity" and "can prejudice a party with a valid, but complex, point to make ...." IPG Comments at 1. No other commenter opposed the imposition of page limits, and the SDC supported them in principle. *See* SDC Comments at 2. Particularly in light of the fact that the proposed regulation expressly states that a party can seek an enlargement of the page limitations by motion, the Judges do not find the imposition of page limits to be an unwarranted burden. The Judges find that the imposition of reasonable page limits is desirable from the standpoint of administrative efficiency and will adopt them in the final rule.

The SDC, the Music PROs and the Program Suppliers each seek clarification of the language of section 305.3(c). The SDC state that the proposed rule "creates and ambiguity if the motion is more than 20 pages and but less than 5,000 words or vice versa," and recommend that the Judges revise the rule to eliminate the ambiguity. *Id.* The Music PROs state that the phrase "exclusive of exhibits, proof of delivery, and the like" is ambiguous. Music PROs Comments at 4. The Music PROs and the Program suppliers both recommended that the Judges state with greater particularity the material that does not count against the page limit. *See id.*; Program

Suppliers Comments at 3. The Judges find these recommendations to be reasonable and will adopt them in the final rule.

The Program Suppliers also recommended that “the Judges modify the proposed rule so that if a page limit extension is granted as to a motion or opposition, that same page limit expansion will automatically apply to any responsive pleadings ....” *Id.* The Judges find the Program Suppliers’ recommendation to be fair and reasonable and will adopt it in the final rule.

Finally, the Program Suppliers argued that the Judges should expand the proposed page limits if they adopt a mandatory form for motions as proposed in section 350.4. *See* Program Suppliers Comments at 3. The Judges note that the proposed page limits are longer than most of the pleadings that the Judges currently receive. Also, as discussed below, the Judges have decided not to adopt a mandatory form for motions and responsive pleadings at this time. Moreover, the proposed provision expressly permits parties to seek an enlargement of the page limitations. The Judges find that their proposed page limits are sufficiently generous and that the Program Suppliers’ recommendation is unnecessary. The Judges will not adopt it.

#### **Section 350.4: Form of Motion and Responsive Pleadings**

The SDC, IPG, the Music Community, the Music PROs, and the Program suppliers commented on this provision. Apart from the Program Suppliers, all who commented on this provision opposed it.

The SDC observed that “the format requirement appears more appropriate for appellate level briefs” and opined that, in some cases, “the required format would enlarge documents without making it any clearer.” SDC Comments at 2. The SDC recommended that the Judges

retain the portion of section 350.4 that sets forth the required content, but strike the language “and conform to the following format.” *Id.* at 3.

IPG viewed the requirement for mandatory subsections in pleadings as “unnecessary” because “the parties have historically demonstrated an ability to adequately address each of these topics in past briefings.” IPG Comments at 1. Like the SDC, IPG opined that the proposed mandatory format would increase the length of submissions. *See id.*

The Music Community expressed confusion about whether the proposal was intended to apply to motions and replies (it was) and whether it was intended to require separate sections in filings to address the matters identified in the various subsections of section 350.4 (it was). Music Community Comments at 12. The Music Community offered the Judges the following tidbit of advice: “To obtain documents written as they want, the Judges may wish to make their intentions in these regards clearer.” *Id.* Substantively, the Music Community argued that “the proposed rule indicate[s] a format and level of formality that seems appropriate for certain documents ... but not others” and recommended that the Judges “provide guidance for the preparation of documents that is outside the rules or drafted in less mandatory terms ....” *Id.* at 12-13.

The Music PROs also expressed confusion as to “whether this section requires that all filings must always include these specific five sections within a pleading, as opposed to, for example, merely requiring the inclusion of the content specified.” Music PROs Comments at 5. They opine that “the content and ordering of these sections is, in some respects, inconsistent with the format typical of motions and responsive briefs in filings made in proceedings before the Judges” and could “impair the clear presentation of motions and responsive pleadings.” *Id.* at 4-5. The Music PROs recommend that the provision either be deleted in its entirety, or altered by

deleting the words “and conform to the following format,” eliminating the language regarding a statement of issues and evidence relied upon, and reorganizing the provision. *See id.* at 5.

The Program Suppliers “[did] not oppose the imposition of a set of required contents and structural formats for pleadings,” but noted that the requirements could “overly complicate simple pleadings and would very likely lengthen pleadings (particularly short ones).” Program Suppliers Comments at 4. The Program Suppliers recommended that the format specifications should apply only to pleadings longer than 10 pages or 2500 words, that several of the proposed sections be consolidated under the heading “Argument,” and that the page limitations be enlarged to 25 pages or 6,250 words for motions and responses, and 15 pages or 3750 words for replies. *See id.* at 4-5.

The Judges proposed section 350.4 to improve the quality and organization of the pleadings that parties submit to the Judges. Submission of pleadings that lack essential elements, or are organized in a way that makes it difficult for the Judges to discern those elements, is not a universal problem, but does occur all too frequently.

The Judges acknowledge the concerns that the commenters have raised, and that this provision requires further consideration and refinement. Rather than delay the remainder of the proposed regulations while working through these concerns, the Judges withdraw the proposed language for the time being, and will adopt a more general requirement that pleadings “must, at a minimum, state concisely the specific relief the party seeks from the ... Judges, and the legal, factual, and evidentiary basis for granting that relief (or denying the relief sought by the moving party).” As noted above, the Judges have also relocated to this provision the requirement to accompany a motion with a proposed order.

### **Section 350.5(a): Documents to be Filed by Electronic Means**

The Music Community, while generally supportive of the proposed requirement that all documents filed by attorneys be filed through eCRB, expressed concern that “it is occasionally necessary to file documents with the Judges that do not related to an active proceeding with an established docket number.” Music Community Comments at 13. The Music Community recommended that, in those cases, eCRB should be designed to permit filings without an active docket number, or the rules should permit a paper filing. *See id.*

The eCRB system will permit filing of documents without an active docket number when the filer is seeking to initiate a new proceeding. The filer will select a proceeding type from a list (*e.g.*, “Distribution Proceeding-Cable TV,” or “Rulemaking”) and will select “Add New” from the list of existing docket numbers. The CRB will assign a docket number as part of its internal business process.

The eCRB system will also permit a filer to fill in a comment field when filing a document. This will provide filers with the opportunity to convey pertinent information to the CRB, including whether a document for which the selected docket number is “Add New” should in fact be associated with a an existing, inactive docket number.

With that explanation, the Judges find that the Music Community’s proposed alternative of permitting paper filings is unnecessary and they will not adopt it.

The Judges have, however, modified the language of section 350.5(a)(1) to have the transition period end September 30, 2017, rather than six-months after the as yet undetermined date of initial deployment of eCRB. The Judges find that having the transition period end on a date certain will avoid any possible confusion over when the transition rules cease to apply.

### **Section 350.5(c)(1): Obtaining an Electronic Filing Password for Attorneys**

The Music Community raised concerns with the portion of this proposed section that requires all attorneys to complete eCRB training. *See id.* at 14. Specifically, the Music Community noted that the training requirement “puts a premium on having such training readily available, including for counsel outside the Washington, DC area ....” *Id.* They recommend that the Judges make training available to attorneys online. *See id.*

The Judges agree that online training would be an effective solution that would be available to attorneys throughout the country. Unfortunately, online training will not be available at the time eCRB becomes operational. The Judges will, however, make documentation including “frequently asked questions” available on their website. In light of the unavailability of online training at the time eCRB becomes operational, the Judges will delete the training requirement from the final rule.

### **Section 350.5(c)(2): Obtaining an Electronic Filing Password for *Pro Se* Participants**

The Music Community did not object to this proposed section which gives the Judges discretion to provide or deny *pro se* participants access to eCRB. Music Community Comments at 14. The Music Community urges the Judges, however, “to grant such access liberally,” noting that “non-use of eCRB ... would burden participants who are represented by counsel, as well as the Judges and their staff ....” *Id.*

As the Music community has pointed out, there are competing concerns at play regarding access by *pro se* participants to eCRB. On one hand, *pro se* participants’ level of technological knowledge and access to technology resources varies widely.<sup>11</sup> The Judges must avoid a

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<sup>11</sup> For example, one participant until recently has filed only handwritten submissions.

situation where a *pro se* participant opts to use eCRB without being fully-aware of the responsibilities that entails or capable of meeting them. On the other, the Judges and all parties will benefit if eCRB is utilized to the fullest. The Judges will bear these considerations in mind when exercising their discretion under this provision, which they will adopt unchanged in the final rule.

**Section 350.5(c)(3): Obtaining an Electronic Filing Password for Claims Filers**

Commenter Commercial Television Claimants (CTV) noted that proposed section 350.5(c)(3) states that “claimants ‘desiring to file a claim with the Copyright Royalty Board for copyright royalties may obtain an eCRB password for the limited purpose of filing claims’” and states that “CTV reserves its right to submit comments when the Judges propose full rules relating to electronic filing of July claims, including whether claimants should be required to obtain passwords for filing claims. CTV requests that the Judges do not issue any rules relating to the filing of July claims until a full set of proposed rules is noticed for comment.”

Commercial Television Claimants Comments on Electronic Filing of Documents (CTV Comments) at 1-2. No other party commented on this provision.

CTV had an opportunity to raise a substantive objection to proposed section 350.5(c)(3) but opted instead to ask the Judges to defer consideration of the proposal until a later rulemaking. Nevertheless, because the next window for filing claims is not until July, section 350.5(c)(3) need not go into effect before the eCRB system becomes operational. The Judges will accede to CTV’s request and defer consideration of section 350.5(c)(3) until after the comment period for proposed regulations regarding filing of claims under 17 U.S.C. 111, 119 and 1007.

### **Section 350.5(h): Accuracy of Docket Entry**

The Music PROs were the only party to comment on this proposed section, which states that eCRB filers are responsible for ensuring the accuracy of docket entries. The Music PROs sought clarification “as to whether or how the filer has the ability to control or cause revisions to the docket if errors are found” and the applicable time frame for doing so. Music PROs Comments at 6.

eCRB will generate docket entries based on the information that the filer enters when filing the document. The purpose of this proposed rule is to inform filers that the accuracy of the docket is critically dependent on the information that the filer enters. eCRB will not permit filers to change docket entries once a document has been filed; rather, this will be an administrative function available only to CRB staff. As with any circumstance in which a party desires the Judges to take a particular action, if the filer wishes the Judges to correct an inaccuracy in the docket, the filer should file a motion to that effect. The Judges will not impose a time limit on filing such a motion.

With that explanation, the Judges will adopt proposed section 350.5(h) without change.

### **Section 350.5(i): Documents Subject to a Protective Order**

CTV, the Music Community and the Music PROs commented on this proposed section which states that filers are responsible for identifying restricted documents as such to the eCRB system.

CTV proposed an amendment to require that parties filing restricted documents to file a redacted public version of the document at the same time. CTV Comments at 2. This is already a standard requirement of the protective orders that the Judges issue in proceedings. *See, e.g.,*

*Protective Order* at 3 (section IV.C) Docket No. 16-CRB-003-PR (2018-2022) (“When a Participant refers to Restricted materials in any filings with the Judges, the Participant shall file the Restricted materials under seal and file concurrently suitably redacted papers for inclusion in the Judges’ public record.”). This practice has worked well in the past, and the Judges find no need to alter it. Consequently, the Judges find CTV’s proposal to be unnecessary and will not adopt it.

The Music Community recommended that the provision be stated in mandatory terms, rather than in terms of assigning responsibility as currently proposed. Music Community Comments at 15-16. The willingness of parties to participate in CRB proceedings is critically dependent on their confidence that doing so will not result in unauthorized public disclosure of their confidential business information. The Music Community’s recommendation would provide additional assurance to participants that restricted information will be protected appropriately. The Judges thus find this change to be appropriate and will adopt it.

The Music PROs expressed concern that the proposal does not state “how such restricted documents should be ‘identified’ by the filer. For example, the proposed language does not state whether the filing itself should be marked or designated in some manner, and if so, how.” Music PROs Comments at 6. They recommended that the Judges revise this section to clarify these matters. *Id.*

Filers will designate documents as “restricted” to eCRB by clicking a check box at the time of filing. Requirements concerning the marking of the documents themselves presently are, and will continue to be determined by the terms of the applicable protective order which, according to the draft regulation, remain full applicable. The Judges do not find it necessary or

appropriate to codify the details of the eCRB user interface in the regulations. The Judges will not adopt the Music PROs' recommendation.

### **Section 350.5(j): Exceptions to Requirement of Electronic Filing**

The Program Suppliers were the only party to comment on this proposed section, which would exempt certain materials from the requirement for filing electronically. The Program Suppliers sought clarification of what constitutes “oversized” for purposes of the regulation (*e.g.*, whether a digital file that exceeds the maximum allowable file size would qualify as “oversized”) and what the due date would be for a paper submission permitted or required under this provision. Program Suppliers Comments at 5.

This provision was primarily intended to provide an alternative means of filing materials that are difficult or impossible to reproduce useably as a PDF file.<sup>12</sup> Examples of exempt materials might include spreadsheets with too many columns to fit legibly on a page, documents with small or indistinct type, or three-dimensional objects. The Judges drafted the provision with sufficient flexibility to apply to a broad number of unanticipated circumstances in which electronic filing would be impossible, impractical, or excessively burdensome. The Judges find that it would be a disservice to filers to make this provision more rigid by making it more specific, and remind filers that, if necessary, they can seek guidance from the Judges by motion.

As noted, the Judges have accepted the Program Suppliers' recommendation to include maximum allowable file sizes as part of section 350.3(b)(2). While section 350.5(j) could permit parties to use an alternative means of filing oversized or unmanageable materials, the Judges

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<sup>12</sup> In many instances the filer could file the document through eCRB in an alternative electronic format under section 350.3(b)(4), which would be the preferred course of action.

discourage the practice. It would be preferable for parties to reduce the size of their filings, or divide them into multiple, smaller files.

Proposed section 350.7(a)(5) makes clear when a document that is not filed through eCRB is considered to be timely filed. The separate requirement under section 350.5(j) to file electronically a notice of filing is subject to the rule governing timeliness of electronic filings generally, *i.e.*, section 350.7(a)(5)(i). The Judges find that the proposed regulations require no clarification.

Finally, the Program Suppliers note that proposed section 350.5(j)(1) includes an erroneous cross reference to section 350.5(a)(2). Program Suppliers Comments at 6. The correct cross reference is to section 350.6(a)(2). The Judges will include the correct cross reference in the final rule.

### **Section 350.5(k): Privacy Requirements**

The Music Community found the protections for personal information contained in this proposed section to be inadequate, and recommended that they be strengthened. Music Community Comments at 16. Specifically, in addition to some minor changes to the wording of the existing proposal, the Music Community recommended that the Judges include the following additional paragraph:

*Protection of personally identifiable information.* If any information identified in paragraph (k)(1) of this section must be included in a filed document, the filing party must treat it as confidential information subject to the applicable protective order. Parties may treat as confidential information subject to the applicable protective order other personal information that is not material to the proceeding.

*Id.*

The Judges find the Program Suppliers' recommendation provides prudent, additional protection in those exceedingly rare instances when parties find it necessary to include personally identifiable information in their filings. The Judges will adopt the Program Suppliers' recommendation and will include it as section 350.5(k)(2).

### **Section 350.5(l)(3): Technical Difficulties**

The Music Community and the Program Suppliers commented on this proposed section which establishes a procedure for filers to follow in the event of technical difficulties that prevent them completing electronic filing, and states that those difficulties may constitute "good cause" justifying an extension of the filing deadline or "excusable neglect" for excusing a late filing. As with many of the other proposed rules, the Judges modelled this provision closely on the Local Rules for the U.S. District Court for the District of Columbia. *See* LCvR 5.4(g)(3) (D. D.C. Apr. 2016).

The Music Community, referring to severe technical problems that the U.S. Copyright Office experienced in 2015, asserted that the "[e]ven if hosting arrangements for eCRB may be different ... system issues have to be viewed as a realistic possibility"<sup>13</sup> and argued that "it is cold comfort to know that the system issue 'may' constitute good cause for a late filing." Music Community Comments at 17-18. The Music Community also asserted that "it is unfair for the Judges' rules to require filing through eCRB and provide no alternative when a systems issue

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<sup>13</sup> Hosting arrangements will be different. eCRB will not be hosted on Library of Congress servers. Instead eCRB will be a cloud-based system hosted by Amazon Web Services. It is hoped that hosting eCRB entirely in the AWS government-only cloud will address the reliability, scalability, and security concerns that the Music Community and others have expressed and that the Judges share. Nevertheless, the Judges acknowledge that technical problems are always a possibility, *see, e.g., Disruption in Amazon's Cloud Service Ripples Through Internet*, N.Y. Times (Feb. 28, 2017, 7:24 P.M. E.S.T.), <https://www.nytimes.com/reuters/2017/02/28/technology/28reuters-amazon-com-aws-outages.html> (visited Mar. 1, 2017), which is why the Judges proposed section 350.5(l)(3).

would cause a party to miss a statutory deadline that the Judges cannot extend.” *Id.* at 18. They propose two changes to the proposed section. First, for nonstatutory filing deadlines they would *require* the Judges to consider technical problems to be a good cause for an extension or delay. *See id.* Second, when technical problems would cause a party to miss a statutory deadline, they propose that “either the notification required by Section 350.5(1)(3) should be considered the time of filing, or the Judges should accept filing by means of electronic mail.” *Id.*

The Judges find that the existing language giving the Judges discretion to accept filings that are late due to a technical problem with eCRB to be an adequate and appropriate means of dealing with any potential failures of technology. It would be both imprudent and unnecessary for the Judges to adopt a rule that categorically makes any technical glitch that contributes to a party’s failure to meet a deadline an automatic basis for extension. The Judges thus reject the Music Community’s first proposal.

The Judges find that the Music Community has raised a valid concern regarding technological issues that could prevent a party from meeting a statutory (*i.e.*, non-extendible) deadline. However, the Judges find their proposed solution of deeming a filing to be made when the party gives the notification required by section 350.5(1)(3) to be problematic. It is not clear to the Judges that a filing that is made after a statutory deadline can be deemed by regulation to have been made earlier. By contrast, the Judges find the Music Community’s suggestion that the Judges accept email filings in those circumstances to be a practical and appropriate solution. The Judges will include language in the final rule that permits electronic mail filing with the Judges and (to the extent required) electronic mail delivery to other parties in the event a technical problem prevents filing through eCRB by a statutory deadline. In addition, the Judges will revise the provision to permit filers to file by electronic mail when a technical problem prevents

them from filing through eCRB by a *non-statutory* deadline as well. In either event, the Judges may require the filer to refile the document through eCRB once the technical problem is resolved, but the filing date of the document will be the date that it was sent to the CRB by electronic mail.

The Program Suppliers comment sought clarification whether after-hours technical support will be available, and sought a “default rule ... for what a party is to do with a filing that it intends to file” after hours on the eve of a filing deadline. Program Suppliers Comments at 6. Customer support will be available during standard business hours. The modifications to the proposed provision described in the preceding paragraph constitute the “default rule” that the Program Suppliers requested.

#### **Section 350.6(f): Deadlines for Responses and Replies**

Proposed section 350.6(f) preserves the existing deadlines for filing of responses and replies of five business days from filing of the motion and four days from filing of the response, respectively. The SDC, IPG, and the Program Suppliers all recommend enlarging that time period. The SDC recommends ten days for responses and seven days for replies. SDC Comments at 3. IPG recommends ten days for response and five days for replies. IPG Comments at 1. The Program Suppliers recommend “a reasonable enlargement of the response and reply deadlines provided that such an enlargement is not likely to result in any hindrance of or delay to the timely distribution of cable and/or satellite royalties.” Program Suppliers Comments at 7.

The Judges recognize that, from the parties’ perspective, the existing deadlines are tight and, in some instances, unnecessarily so. The Judges find that a modest increase in the response time for responses and replies is appropriate, with the understanding that the Judges may shorten

the response time by order as necessary. In this rulemaking, the Judges extend motion response times to ten days for responses and five days for replies.

**Section 350.6(g): Participant List**

CTV and the Program Suppliers both recommended that this provision be modified to clarify that the participant list will indicate whether a party receives documents through eCRB, or whether other parties must deliver documents to that party by other means. *See* CTV Comments at 3; Program Suppliers Comments at 7.

The participant list maintained in eCRB will indicate which parties do and do not receive filed documents through eCRB. In addition, at the time a document is filed, eCRB will inform the filer of the identity of any parties on the participant list to whom the filer must deliver the document outside the eCRB system. The Judges find CTV’s proposed modification to section 350.6(g) to reflect the items of information maintained in the participant list to be reasonable and appropriate and will adopt it.

**Section 350.6(h): Delivery Method and Proof of Delivery**

The SDC noted that “participants in royalty distribution proceedings have adopted an informal procedure to serve each party electronically on the same day that pleadings are filed.” SDC Comments at 3. The SDC recommended that the rules allow email in lieu of paper delivery for documents filed outside of eCRB.

The Judges find that proposed section 350.6(h)(2) already permits parties to deliver documents to other parties “by such other means as the parties may agree in writing among themselves.” The Judges recognize, however, that the heading “*Paper filings*” at the beginning of this paragraph may be interpreted to preclude delivery by electronic mail. The Judges did not

intend to preclude parties from agreeing among themselves to exchange documents by electronic mail. Consequently, the Judges will change the paragraph heading to read “*Other filings.*”

The Music Community expressed concern that proposed section 350.6(h)(2) “might be read as applying to discovery responses that are served on other participants” and not filed with the CRB. Music Community Comments at 19-20. The Judges do not find that to be a reasonable interpretation of the language they proposed. Nevertheless, the Judges find the Music Community’s proposed language to be reasonable, clear, concise, and in accordance with the Judges’ intention. The Judges will modify section 350.6(h)(2) accordingly.

### **Section 351.1: Initiation of Proceedings**

The Program Suppliers recommended that section 351.1 be amended to “clarify whether, at the point of filing an initial Petition to Participate, any party needs to be served ....” Program Suppliers Comments at 8. The only change that the Judges are proposing to this provision is to make reference to the ability of filers to make payment of the \$150 filing fee through a portal provided by eCRB to the CRB’s payment processor. Under current rules and practices, parties file Petitions to Participate with the CRB only. That will not change once the parties are able to file Petitions to Participate through eCRB. The Judges find that no further change to section 351.1 is needed.

### **General Comments**

Some commenters offered general comments, unrelated to any of the specific proposed rules. For example, CTV proposed that attorneys representing participants, and approved *pro se* participants, be granted access to eCRB to retrieve all non-restricted pleadings and orders in all cases before the CRB. *See* CTV Comments at 3-4. Similarly, the Music Community and the

Music PROs recommended that all non-restricted materials be made available to the general public through eCRB. *See* Music Community Comments at 5; Music PROs Comments at 2.

The Judges can confirm that eCRB is being designed to allow attorneys, *pro se* participants, and members of the general public to search for and retrieve non-restricted documents stored in the system. During the current, initial phase of the project, only documents filed from and after the date the system becomes operational will be stored in eCRB. The system is being designed to permit inputting of documents that were filed with the CRB prior to that date, but the task of uploading of those documents is not within the scope of the current phase of the project. The Judges plan to input those documents at some time in the future, subject to budgetary and personnel constraints. No commenter requested any specific regulatory language relating to this issue. The Judges, therefore, will not adopt any regulatory language at this time.

The Music Community professed confusion concerning the Judge's use of the term "delivery" in the proposed regulations, and recommended that the Judges revert to using the term "service" as in the existing regulations. *See* Music Community Comments at 19. The Judges substituted the term "delivery" for "service" in recognition of the fact that formal service of documents is not a requirement in CRB proceedings. Instead, participants are merely required to provide copies of filed documents to the other participants. The Judges use "delivery" in its sense of "giving forth" or "dispatching;" they do not intend to imply that a party is obliged to guaranty receipt of the document. In light of that explanation, the Judges find no need to replace the words "deliver" and "delivery" where they appear in the proposed regulations.

The Music Community exhorted the Judges to include strong protection for confidential business information in eCRB, and to allow users to test those protections before the system becomes operational. *See id.* at 7-8. In addition, they recommended that the Judges impose a

five-business-day waiting period between the filing of non-restricted documents with eCRB, and public availability of those documents through the system, in order to give parties an opportunity to intervene if one of them improperly fails to identify a document as “restricted” to the system.

*See id.*

eCRB is being designed and implemented with security in mind, and will comply with applicable federal information security standards as well as the very rigorous standards required by the Library of Congress. After completion and before launch, the system will be subject to an assessment and authorization process conducted by an independent contractor of the Library of Congress (separate from the contractor that is building the system). The Judges find that it is neither necessary nor appropriate to allow prospective users to carry out their own security assessment on the system.

The CRB is an office of public record and the Judges take seriously their obligation to provide timely public access to the record of CRB proceedings. The Judges also recognize the importance of protecting confidential business information against unauthorized disclosure. In the past, these sometimes competing interests have been balanced through the operation of the protective orders that the Judges have adopted. Among other things, these protective orders specify the steps to be taken to mitigate any damage that might be caused when confidential information is not properly designated and treated as restricted. The Judges anticipate that future protective orders, as they may be revised from time to time, will continue to provide adequate means for addressing any inadvertent disclosures of information that should have been designated restricted. The Judges find that the Music Community’s proposal to impose a mandatory waiting period before the disclosure of every non-restricted document is unnecessary,

overbroad, and an unjustified infringement on the public’s right of access to the record of CRB proceedings. The Judges will not adopt the Music Community’s proposal.

Having considered all comments from interested parties, the Judges adopt as final rules the changes and additions to parts 301, 350, and 351 detailed in this Final Rule.

### **List of Subjects**

37 CFR Part 301

Copyright, Organization and functions (government agencies).

37 CFR Part 350

Administrative practice and procedure, Copyright, Lawyers.

37 CFR Part 351

Administrative practice and procedure, Copyright.

### **Final Regulations**

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges amend parts 301, 350, and 351 of Title 37 of the Code of Federal Regulations as follows:

#### **PART 301—ORGANIZATION**

1. The authority citation for part 301 continues to read as follows:

**Authority:** 17 U.S.C. 801.

#### **§ 301.2 [Amended]**

2. Revise § 301.2 to read as follows:

**§ 301.2 Official addresses.**

All claims, pleadings, and general correspondence intended for the Copyright Royalty Board and not submitted by electronic means through the electronic filing system (“eCRB”) must be addressed as follows:

(a) If sent by mail (including overnight delivery using United States Postal Service Express Mail), the envelope should be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

(b) If hand-delivered by a private party, the envelope must be brought to the Copyright Office Public Information Office, Room LM–401 in the James Madison Memorial Building, and be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559–6000.

(c) If hand-delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar courier services), the envelope must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE, Washington, DC, addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000.

(d) Subject to paragraph (f) of this section, if sent by electronic mail, to [crb@loc.gov](mailto:crb@loc.gov).

(e) Correspondence and filings for the Copyright Royalty Board may not be delivered by means of:

(1) Overnight delivery services such as Federal Express, United Parcel Service, etc.; or

(2) Fax.

(f) General correspondence for the Copyright Royalty Board may be sent by electronic mail. Claimants or Parties must not send any claims, pleadings, or other filings to the Copyright

Royalty Board by electronic mail without specific, advance authorization of the Copyright Royalty Judges.

**PART 350—GENERAL ADMINISTRATIVE PROVISIONS**

3. The authority citation for part 350 continues to read as follows:

**Authority:** 17 U.S.C. 803.

4. Revise § 350.3 to read as follows:

**§ 350.3 Documents: format and length.**

(a) *Format*—(1) *Caption and description.* Parties filing pleadings and documents in a proceeding before the Copyright Royalty Judges must include on the first page of each filing a caption that identifies the proceeding by proceeding type and docket number, and a heading under the caption describing the nature of the document. In addition, to the extent technologically feasible using software available to the general public, Parties must include a footer on each page after the page bearing the caption that includes the name and posture of the filing party, *e.g.*, [Party’s] Motion, [Party’s] Response in Opposition, *etc.*

(2) *Page layout.* Parties must submit documents that are typed (double spaced) using a serif typeface (*e.g.*, Times New Roman) no smaller than 12 points for text or 10 points for footnotes and formatted for 8 ½ by 11 inch pages with no less than 1 inch margins. Parties must assure that, to the extent technologically feasible using software available to the general public, any exhibit or attachment to documents reflects the docket number of the proceeding in which it is filed and that all pages are numbered appropriately. Any party submitting a document to the Copyright Royalty Board in paper format must submit it unfolded and produced on opaque 8 ½ by 11 inch white paper using clear black text, and color to the extent the document uses color to convey information or enhance readability.

(3) *Binding or securing.* Parties submitting any paper document to the Copyright Royalty Board must bind or secure the document in a manner that will prevent pages from becoming separated from the document. For example, acceptable forms of binding or securing include: ring binders; spiral binding; comb binding; and for documents of fifty pages or fewer, a binder clip or single staple in the top left corner of the document. Rubber bands and paper clips are not acceptable means of securing a document.

(b) *Additional format requirements for electronic documents—(1) In general.* Parties filing documents electronically through eCRB must follow the requirements of paragraphs (a)(1) and (2) of this section and the additional requirements in paragraphs (b)(2) through (10) of this section.

(2) *Pleadings; file type.* Parties must file all pleadings, such as motions, responses, replies, briefs, notices, declarations of counsel, and memoranda, in Portable Document Format (PDF).

(3) *Proposed orders; file type.* Parties filing a proposed order as required by § 350.4 must prepare the proposed order as a separate Word document and submit it together with the main pleading.

(4) *Exhibits and attachments; file types.* Parties must convert electronically (not scan) to PDF format all exhibits or attachments that are in electronic form, with the exception of proposed orders and any exhibits or attachments in electronic form that cannot be converted into a usable PDF file (such as audio and video files, files that contain text or images that would not be sufficiently legible after conversion, or spreadsheets that contain too many columns to be displayed legibly on an 8-1/2" x 11" page). Participants must provide electronic copies in their native electronic format of any exhibits or attachments that cannot be converted into a usable

PDF file. In addition, participants may provide copies of other electronic files in their native format, in addition to PDF versions of those files, if doing so is likely to assist the Judges in perceiving the content of those files.

(5) *No scanned pleadings.* Parties must convert every filed document directly to PDF format (using “print to pdf” or “save to pdf”), rather than submitting a scanned PDF image. The Copyright Royalty Board will NOT accept scanned documents, except in the case of specific exhibits or attachments that are available to the filing party only in paper form.

(6) *Scanned exhibits.* Parties must scan exhibits or other documents that are only available in paper form at no less than 300 dpi. All exhibits must be searchable. Parties must scan in color any exhibit that uses color to convey information or enhance readability.

(7) *Bookmarks.* Parties must include in all electronic documents appropriate electronic bookmarks to designate the tabs and/or tables of contents that would appear in a paper version of the same document.

(8) *Page rotation.* Parties must ensure that all pages in electronic documents are right side up, regardless of whether they are formatted for portrait or landscape printing.

(9) *Signature.* The signature line of an electronic pleading must contain “/s/” followed by the signer’s typed name. The name on the signature line must match the name of the user logged into eCRB to file the document.

(10) *File size.* The eCRB system will not accept PDF or Word files that exceed 128 MB, or files in any other format that exceed 500 MB. Parties may divide excessively large files into multiple parts if necessary to conform to this limitation.

(c) *Length of submissions.* Whether filing in paper or electronically, parties must adhere to the following space limitations or such other space limitations as the Copyright Royalty

Judges may direct by order. Any party seeking an enlargement of the applicable page limit must make the request by a motion to the Copyright Royalty Judges filed no fewer than three days prior to the applicable filing deadline. Any order granting an enlargement of the page limit for a motion or response shall be deemed to grant the same enlargement of the page limit for a response or reply, respectively.

(1) *Motions*. Motions must not exceed 20 pages and must not exceed 5000 words (exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery).

(2) *Responses*. Responses in support of or opposition to motions must not exceed 20 pages and must not exceed 5000 words (exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery).

(3) *Replies*. Replies in support of motions must not exceed 10 pages and must not exceed 2500 words (exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery).

5. Redesignate §§ 350.4 through 350.6 as §§ 350.6 through 350.8, respectively.

6. Add new §§ 350.4 and 350.5 to read as follows:

**§ 350.4 Content of motion and responsive pleadings.**

A motion, responsive pleading, or reply must, at a minimum, state concisely the specific relief the party seeks from the Copyright Royalty Judges, and the legal, factual, and evidentiary basis for granting that relief (or denying the relief sought by the moving party). A motion, or a responsive pleading that seeks alternative relief, must be accompanied by a proposed order.

**§ 350.5 Electronic filing system (eCRB).**

(a) *Documents to be filed by electronic means—(1) Transition period.* For the period commencing with the initial deployment of the Copyright Royalty Board’s electronic filing and case management system (eCRB) and ending January 1, 2018, all parties having the technological capability must file all documents with the Copyright Royalty Board through eCRB in addition to filing paper documents in conformity with applicable Copyright Royalty Board rules. The Copyright Royalty Board must announce the date of the initial deployment of eCRB on the Copyright Royalty Board website ([www.loc.gov/crb](http://www.loc.gov/crb)), as well as the conclusion of the dual-system transition period.

(2) *Subsequent to transition period.* Except as otherwise provided in this chapter, all attorneys must file documents with the Copyright Royalty Board through eCRB. *Pro se* parties may file documents with the Copyright Royalty Board through eCRB, subject to § 350.4(c)(2).

(b) *Official record.* The electronic version of a document filed through and stored in eCRB will be the official record of the Copyright Royalty Board.

(c) *Obtaining an electronic filing password—(1) Attorneys.* An attorney must obtain an eCRB password from the Copyright Royalty Board in order to file documents or to receive copies of orders and determinations of the Copyright Royalty Judges. The Copyright Royalty Board will issue an eCRB password after the attorney applicant completes the application form available on the CRB website.

(2) *Pro se parties.* A party not represented by an attorney (a *pro se* party) may obtain an eCRB password from the Copyright Royalty Board with permission from the Copyright Royalty Judges, in their discretion. To obtain permission, the *pro se* party must submit an application on the form available on the CRB website, describing the party’s access to the Internet and confirming the party’s ability and capacity to file documents and receive electronically the

filings of other parties on a regular basis. If the Copyright Royalty Judges grant permission, the *pro se* party must complete the eCRB training provided by the Copyright Royalty Board to all electronic filers before receiving an eCRB password. Once the Copyright Royalty Board has issued an eCRB password to a *pro se* party, that party must make all subsequent filings by electronic means through eCRB.

(d) *Use of an eCRB password.* An eCRB password may be used only by the person to whom it is assigned, or, in the case of an attorney, by that attorney or an authorized employee or agent of that attorney's law office or organization. The person to whom an eCRB password is assigned is responsible for any document filed using that password.

(e) *Signature.* The use of an eCRB password to login and submit documents creates an electronic record. The password operates and serves as the signature of the person to whom the password is assigned for all purposes under this chapter III.

(f) *Originals of sworn documents.* The electronic filing of a document that contains a sworn declaration, verification, certificate, statement, oath, or affidavit certifies that the original signed document is in the possession of the attorney or *pro se* party responsible for the filing and that it is available for review upon request by a party or by the Copyright Royalty Judges. The filer must file through eCRB a scanned copy of the signature page of the sworn document together with the document itself.

(g) *Consent to delivery by electronic means.* An attorney or *pro se* party who obtains an eCRB password consents to electronic delivery of all documents, subsequent to the petition to participate, that are filed by electronic means through eCRB. Counsel and *pro se* parties are responsible for monitoring their email accounts and, upon receipt of notice of an electronic filing,

for retrieving the noticed filing. Parties and their counsel bear the responsibility to keep the contact information in their eCRB profiles current.

(h) *Accuracy of docket entry.* A person filing a document by electronic means is responsible for ensuring the accuracy of the official docket entry generated by the eCRB system, including proper identification of the proceeding, the filing party, and the description of the document. The Copyright Royalty Board will maintain on its website ([www.loc.gov/crb](http://www.loc.gov/crb)) appropriate guidance regarding naming protocols for eCRB filers.

(i) *Documents subject to a protective order.* A person filing a document by electronic means must ensure, at the time of filing, that any documents subject to a protective order are identified to the eCRB system as “restricted” documents. This requirement is in addition to any requirements detailed in the applicable protective order. Failure to identify documents as “restricted” to the eCRB system may result in inadvertent publication of sensitive, protected material.

(j) *Exceptions to requirement of electronic filing—(1) Certain exhibits or attachments.* Parties may file in paper form any exhibits or attachments that are not in a format that readily permits electronic filing, such as oversized documents; or are illegible when scanned into electronic format. Parties filing paper documents or things pursuant to this paragraph must deliver legible or usable copies of the documents or things in accordance with § 350.6(a)(2) and must file electronically a notice of filing that includes a certificate of delivery.

(2) *Pro se parties.* A *pro se* party may file documents in paper form and must deliver and accept delivery of documents in paper form, unless the *pro se* party has obtained an eCRB password.

(k) *Privacy requirements.* (1) Unless otherwise instructed by the Copyright Royalty Judges, parties must exclude or redact from all electronically filed documents, whether designated “restricted” or not:

(i) *Social Security numbers.* If an individual's Social Security number must be included in a filed document for evidentiary reasons, the filer must use only the last four digits of that number.

(ii) *Names of minor children.* If a minor child must be mentioned in a document for evidentiary reasons, the filer must use only the initials of that child.

(iii) *Dates of birth.* If an individual's date of birth must be included in a pleading for evidentiary reasons, the filer must use only the year of birth.

(iv) *Financial account numbers.* If a financial account number must be included in a pleading for evidentiary reasons, the filer must use only the last four digits of the account identifier.

(2) *Protection of personally identifiable information.* If any information identified in paragraph (k)(1) of this section must be included in a filed document, the filing party must treat it as confidential information subject to the applicable protective order. In addition, parties may treat as confidential, and subject to the applicable protective order, other personal information that is not material to the proceeding.

(1) *Incorrectly filed documents.* (1) The Copyright Royalty Board may direct an eCRB filer to re-file a document that has been incorrectly filed, or to correct an erroneous or inaccurate docket entry.

(2) After the transition period, if an attorney or a *pro se* party who has been issued an eCRB password inadvertently presents a document for filing in paper form, the Copyright

Royalty Board may direct the attorney or *pro se* party to file the document electronically. The document will be deemed filed on the date it was first presented for filing if, no later than the next business day after being so directed by the Copyright Royalty Board, the attorney or *pro se* participant files the document electronically. If the party fails to make the electronic filing on the next business day, the document will be deemed filed on the date of the electronic filing.

(m) *Technical difficulties.* (1) A filer encountering technical problems with an eCRB filing must immediately notify the Copyright Royalty Board of the problem either by email or by telephone, followed promptly by written confirmation.

(2) If a filer is unable due to technical problems to make a filing with eCRB by an applicable deadline, and makes the notification required by paragraph (m)(1) of this section, the filer shall use electronic mail to make the filing with the CRB and deliver the filing to the other parties to the proceeding. The filing shall be considered to have been made at the time it was filed by electronic mail. The Judges may direct the filer to refile the document through eCRB when the technical problem has been resolved, but the document shall retain its original filing date.

(3) The inability to complete an electronic filing because of technical problems arising in the eCRB system may constitute “good cause” (as used in § 350.6(b)(4)) for an order enlarging time or excusable neglect for the failure to act within the specified time, provided the filer complies with paragraph (m)(1) of this section. This section does not provide authority to extend statutory time limits.

7. Revise newly redesignated §§ 350.6 and 350.7 to read as follows:

**§ 350.6 Filing and delivery.**

(a) *Filing of pleadings*—(1) *Electronic filing through eCRB*. Except as described in § 350.5(1)(2), any document filed by electronic means through eCRB in accordance with § 350.5 constitutes filing for all purposes under this chapter, effective as of the date and time the document is received and timestamped by eCRB.

(2) *All other filings*. For all filings not submitted by electronic means through eCRB, the submitting party must deliver an original, five paper copies, and one electronic copy in Portable Document Format (PDF) on an optical data storage medium such as a CD or DVD, a flash memory device, or an external hard disk drive to the Copyright Royalty Board in accordance with the provisions described in § 301.2 of this chapter. In no case will the Copyright Royalty Board accept any document by facsimile transmission or electronic mail, except with prior express authorization of the Copyright Royalty Judges.

(b) *Exhibits*. Filers must include all exhibits with the pleadings they support. In the case of exhibits not submitted by electronic means through eCRB, whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Copyright Royalty Judges will consider a motion, made in advance of the filing, to reduce the number of required copies. *See* § 350.5(j).

(c) *English language translations*. Filers must accompany each submission that is in a language other than English with 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, so long as the responding party's translation proves a substantive, relevant difference in the document.

(d) *Affidavits*. The testimony of each witness must be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony. *See* § 350.5(f).

(e) *Subscription*—(1) *Parties represented by counsel.* Subject to § 350.5(e), all documents filed electronically by counsel must be signed by at least one attorney of record and must list the attorney’s full name, mailing address, e-mail address (if any), telephone number, and a state bar identification number. *See* § 350.5(e). Submissions signed by an attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that the contents of the document are true and correct, to the best of the signer’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances and:

(i) The document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(ii) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted by the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(2) *Parties representing themselves.* The original of all paper documents filed by a party not represented by counsel must be signed by that party and list that party’s full name, mailing address, email address (if any), and telephone number. The party’s signature will constitute the party’s 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.

(f) *Responses and replies.* Responses in support of or opposition to motions must be filed within ten days of the filing of the motion. Replies to responses must be filed within five days of the filing of the response.

(g) *Participant list.* The Copyright Royalty Judges will compile and distribute to those parties who have filed a valid petition to participate the official participant list for each proceeding, including each participant's mailing address, email address, and whether the participant is using the eCRB system for filing and receipt of documents in the proceeding. For all paper filings, a party must deliver a copy of the document to counsel for all other parties identified in the participant list, or, if the party is unrepresented by counsel, to the party itself. Parties must notify the Copyright Royalty Judges and all parties of any change in the name or address at which they will accept delivery and must update their eCRB profiles accordingly.

(h) *Delivery method and proof of delivery—(1) Electronic filings through eCRB.* Electronic filing of any document through eCRB operates to effect delivery of the document to counsel or *pro se* participants who have obtained eCRB passwords, and the automatic notice of filing sent by eCRB to the filer constitutes proof of delivery. Counsel or parties who have not yet obtained eCRB passwords must deliver and receive delivery as provided in paragraph (h)(2). Parties making electronic filings are responsible for assuring delivery of all filed documents to parties that do not use the eCRB system.

(2) *Other filings.* During the course of a proceeding, each party must deliver all documents that they have filed other than through eCRB to the other parties or their counsel by means no slower than overnight express mail sent on the same day they file the documents, or by such other means as the parties may agree in writing among themselves. Parties must include a proof of delivery with any document delivered in accordance with this paragraph.

**§ 350.7 Time.**

(a) *Computation.* To compute the due date for filing and delivering any document or performing any other act directed by an order of the Copyright Royalty Judges or the rules of the Copyright Royalty Board:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and federal holidays when the period is less than 11 days, unless computation of the due date is stated in calendar days.

(3) Include the last day of the period, unless it is a Saturday, Sunday, federal holiday, or a day on which the weather or other conditions render the Copyright Royalty Board's office inaccessible.

(4) As used in this rule, "federal holiday" means the date designated for the observance of New Year's Day, Inauguration Day, Birthday of Martin Luther King, Jr., George Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day declared a federal holiday by the President or the Congress.

(5) Except as otherwise described in this Chapter or in an order by the Copyright Royalty Judges, the Copyright Royalty Board will consider documents to be timely filed only if:

(i) They are filed electronically through eCRB and time-stamped by 11:59:59 pm Eastern time on the due date;

(ii) They are sent by U.S. mail, are addressed in accordance with § 301.2(a) of this chapter, have sufficient postage, and bear a USPS postmark on or before the due date;

(iii) They are hand-delivered by private party to the Copyright Office Public Information Office in accordance with § 301.2(b) of this chapter and received by 5:00 pm Eastern time on the due date; or

(iv) They are hand-delivered by commercial courier to the Congressional Courier Acceptance Site in accordance with § 301.2(c) of this chapter and received by 4:00 pm Eastern time on the due date.

(6) Any document sent by mail and dated only with a business postal meter will be considered filed on the date it is actually received by the Library of Congress.

(b) *Extensions.* A party seeking an extension must do so by written motion. Prior to filing such a motion, a party must attempt to obtain consent from the other parties to the proceeding. An extension motion must state:

(1) The date on which the action or submission is due;

(2) The length of the extension sought;

(3) The date on which the action or submission would be due if the extension were allowed;

(4) The reason or reasons why there is good cause for the delay;

(5) The justification for the amount of additional time being sought; and

(6) The attempts that have been made to obtain consent from the other parties to the proceeding and the position of the other parties on the motion.

**PART 351—PROCEEDINGS**

8. The authority citation for part 351 continues to read as follows:

Authority: 17 U.S.C. 803.

9. In § 351.1, revise paragraph (b)(4) to read as follows:

**§ 351.1 Initiation of proceedings.**

\* \* \* \* \*

(b) \* \* \*

(4) *Filing fee.* A petition to participate must be accompanied with a filing fee of \$150 or the petition will be rejected. For petitions filed electronically through eCRB, payment must be made to the Copyright Royalty Board through the payment portal designated on eCRB. For petitions filed by other means, payment must be made to the Copyright Royalty Board by check or by money order. 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 \$1,000 or less, the petitioner must 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 \$1,000, the Copyright Royalty Judges will require payment of the filing fee at that time.

\* \* \* \* \*

Dated: March 3, 2017

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Suzanne M. Barnett  
Chief Copyright Royalty Judge

Approved by:

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Carla D. Hayden  
Librarian of Congress

**[BILLING CODE: 1410-72-P]**

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