

fall outside the scope of the statute because they are derivative works or for any other reason outlined above, the Section 115 provisions do not apply. A commercial license is required to make and distribute those types of ringtones. There will, of course, be some instances where the status of a ringtone (monophonic, polyphonic, and mastertones) for Section 115 purposes is unclear. A judicial determination would be required where such mixed question of fact and law are present.

While we cannot delineate a litmus test that will in every case determine specifically whether a particular ringtone is or is not within the scope of the statutory license, the guidance offered above is sufficient for purposes of this proceeding. In general, a ringtone will fall within the scope of the compulsory license unless it has so altered the musical composition as to constitute a derivative work. Simply excerpting a single portion of a licensed sound recording of a musical composition will not constitute the making of a derivative work. It is clear that many, but not all, ringtones will fall within the scope of the Section 115 license. Therefore, it is appropriate for the Copyright Royalty Judges to determine royalties to be payable for the making and distribution of ringtones under the compulsory license.

Dated: October 16, 2006

Marybeth Peters,  
Register of Copyrights.

[FR Doc. E6-18426 Filed 10-31-06; 8:45 am]

BILLING CODE 1410-30-S

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2006-6]

### Notice of Intent to Audit

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing receipt of a notice of intent to audit 2005 statements of account concerning the eligible nonsubscription and subscription transmissions of sound recordings made by Live365, Inc. ("Live365") under statutory licenses.

**FOR FURTHER INFORMATION CONTACT:** Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform a sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of "eligible nonsubscription transmissions" and digital transmissions made by "new subscription services." 17 U.S.C. 114. The Copyright Act, title 17 of the United States Code, defines these terms as follows:

An "eligible nonsubscription transmission" is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services.

See 17 U.S.C. 114(j)(6).

A "new subscription service" is "a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service."

17 U.S.C. 114(j)(8).

Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. Use of these licenses requires that services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect statements of account and royalty fee payments from services and distribute the royalty fees to copyright owners and performers entitled to receive such royalties under sections 112(e) and 114(g) following a proceeding before a Copyright Arbitration Royalty Panel ("CARP")—the entity responsible for setting rates and terms for use of the section 112 and section 114 licenses prior to the passage of the Copyright Royalty and Distribution Reform Act of 2004 ("CRDRA"), Pub. L. No. 108-419, 118

Stat. 2341 (2004). See 69 FR 5695 (February 6, 2004).

This Act, which the President signed into law on November 30, 2004, and which became effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the CARP system and replacing it with three permanent Copyright Royalty Judges ("CRJs"). Consequently, the CRJs will carry out the functions heretofore performed by the CARPs, including the adjustment of rates and terms for certain statutory licenses such as the section 114 and 112 licenses. However, section 6(b)(3) of the Act states in pertinent part:

[t]he rates and terms in effect under section 114(f)(2) or 112(e) . . . on December 30, 2004, for new subscription services [and] eligible nonsubscription services . . . shall remain in effect until the later of the first applicable effective date for successor terms and rates . . . or such later date as the parties may agree or the Copyright Royalty Judges may establish.

Successor rates and terms for these licenses have not yet been established. Accordingly, the terms of the section 114 and 112 licenses, as currently constituted, are still in effect.

One of the current terms, set forth in § 262.6 of title 37 of the Code of Federal Regulations, states that SoundExchange, as the Designated Agent, may conduct a single audit of a Licensee for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and serve this notice on the service to be audited. 37 CFR 262.6(c).

On December 23, 2005, SoundExchange filed with the Copyright Office a notice of intent to audit Live365 for the years 2002, 2003, and 2004. See 72 FR 624 (January 5, 2006). Subsequently, on October 5, 2006, SoundExchange filed a second notice of intent to audit Live365,<sup>1</sup> pursuant to § 262.6(c), notifying the Copyright Office of its intent to expand its current audit to cover 2005. Section 262.6(c) requires the Copyright Office to publish a notice in the **Federal Register** within thirty days of receipt of the filing announcing the Designated Agent's intent to conduct an audit.

In accordance with this regulation, the Office is publishing today's notice to fulfill this requirement with respect to

<sup>1</sup> A copy of the new Notice of Intent to Audit Live365, Inc. is posted on the Copyright Office Web site at <http://www.copyright.gov/carp/live365-notice.2005.pdf>.

the notice of intent to audit filed by SoundExchange on October 5, 2006.

Dated: October 26, 2006

**Tanya M. Sandros,**

*Associate General Counsel.*

[FR Doc. E6-18422 Filed 10-31-06; 8:45 am]

**BILLING CODE 1410-33-S**

## **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts; Arts Advisory Panel**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

*Theater* (application review): November 14-17, 2006 in Room 730. This meeting, from 9 a.m. to 5 p.m. on November 14th, 15th, and 16th and from 9 a.m. to 3 p.m. on November 17th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: October 27, 2006.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations,  
National Endowment for the Arts.*

[FR Doc. E6-18453 Filed 10-31-06; 8:45 am]

**BILLING CODE 7537-01-P**

## **NATIONAL SCIENCE FOUNDATION**

### **Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95-541)**

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic

Conservation Act of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 1, 2006. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292-7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Samuel D. Feola (Permit Application No. 2007-018), Raytheon Technical Services Company, LLC, Polar Services, 7400 S. Tucson Way, Centennial, CO 80112-3938.

*Activity for Which Permit is Requested:* Enter an Antarctic Specially Protected Area. The applicant proposes to enter the Avian Island Antarctic Specially Protected Area (ASPA #117) to gain access to a U.S. Antarctic Program (USAP) field research camp. Access to the camp is for: (a) Movement of personnel and supplies from ship to shore via Zodiac or other small boat; (b) opening and closing tasks for the research facilities on shore; and, (c) maintenance and servicing of on-shore facilities and equipment.

*Location:* Avian Island (ASPA #117).

*Dates:* October 23, 2006 to August 31, 2010.

2. *Applicant:* Samuel D. Feola (Permit Application No. 2007-019), Raytheon

Technical Services Company, LLC, Polar Services, 7400 S. Tucson Way, Centennial, CO 80112-3938.

*Activity for Which Permit is Requested:* Enter an Antarctic Specially Protected Area. The applicant proposes to enter the Cape Shirreff Antarctic Specially Protected Area (ASPA #149) to gain access to a U.S. Antarctic Program (USAP) field research camp. Access to the camp is for: (a) Movement of personnel and supplies from ship to shore via Zodiac or other small boat; (b) opening and closing tasks for the research facilities on shore; and, (c) maintenance and servicing of on-shore facilities and equipment.

*Location:* Avian Island (ASPA #149).

*Dates:* October 23, 2006 to August 31, 2010.

3. *Applicant:* Anne Aghion (Permit Application No. 2007-020), P.O. Box 1528, New York, NY 10276.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Areas. The applicant plans to enter the historic huts at Cape Evans (ASPA #155), Cape Royds (ASPA #157), and Hut Point (ASPA #158) for the purpose of filming a documentary. This documentary is about the human experience of working and living in Antarctica. Access to the historic huts is to document the emotions displayed by visitors when experiencing the huts, the historical connection and to the original Antarctic explorers.

*Location:* Cape Evans (ASPA #155), Cape Royds (ASPA #157) and Hut Point (ASPA #158).

*Dates:* November 01, 2006 to December 31, 2006.

4. *Applicant:* Werner Herzog (Permit Application No. 2007-021), 8865 Wonderland Avenue, Los Angeles, CA 90046-1851.

*Activity for Which Permit is Requested:* Enter an Antarctic Specially Protected Area. The applicant plans to enter the historic hut at Cape Royds (ASPA #157) for the purpose of filming a documentary. This documentary is being filmed for the U.S. Discovery Channel.

*Location:* Cape Royds (ASPA #157).

*Dates:* November 14, 2006 to December 18, 2006.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E6-18387 Filed 10-31-06; 8:45 am]

**BILLING CODE 7555-01-P**