interim basis. 58 FR 67690 (December 22, 1993).

On January 18, 1994, the Copyright Office published proposed regulations that revised the adopted CRT rules and adapted them for the administration of the new ad hoc arbitration panels. 59 FR 2550 (January 18, 1994). At this time, the Office concluded that it was not a successor agency of the CRT, and would therefore, not continue any matter before the CRT at the time the CRT Reform Act became law. Instead, parties who had issues pending before the Tribunal would need to initiate new action under the rules and regulations governing the administration of the CARPs.

On February 15, 1994, the performing rights organizations filed a comment with the Copyright Office seeking reconsideration of the rule, now adopted by the Copyright Office, that required separate, specific, written authorization from the members of the performing rights societies. In the Matter of Copyright Arbitration Royalty Panels; Rules and Regulations, Copyright Office Docket No. RM 94–1. Essentially, in response to our Notice of Proposed Rulemaking, the performing rights organizations asked that their comments either serve to reopen the CRT's former rulemaking proceeding or that the Office consider the matter anew. PRO Comment at 4. The Gospel Music Coalition and Copyright Management, Inc. filed a joint reply on February 23, 1994, to the performing rights organizations' comment and opposed reconsideration of the issue. Id.

On May 9, 1994, the Copyright Office issued interim regulations which noted that the Office considered the performing rights organizations' comment as a petition for reconsideration of a pending CRT matter and would consider the petition anew in a separate rulemaking. 59 FR 23964, 23966 (May 9, 1994). Subsequently, the Office initiated a review of the rule with a request for comments on the issue of whether performing rights organizations need specific, separate, written authorization to represent their members' or affiliates' interest in the collection and distribution of DART royalties. 59 FR 63043 (December 7, 1994).

II. The Parties

The American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc. (SESAC) (collectively, "Performing Rights Organizations or PRO") filed joint comments advocating the adoption of a rebuttable presumption of agency between the Performing Rights Organizations and their members or affiliates for the collection and distribution of royalties.

The Gospel Music Coalition ("GMC") and James Cannings filed comments with the former CRT supporting the present requirement for specific, separate, written authorization. In response to the notice for comments in this proceeding, GMC and Mr. Cannings requested that these former comments be incorporated into the present review.

III. Discussion

Section 1007(a)(1) of the Copyright Code defines the class of eligible claimants as "every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006."

Section 1006 describes the entitlement to royalties as belonging to those interested copyright parties whose works were embodied in a digital or analog musical recording, and distributed, or disseminated to the public in transmissions.

Therefore, a performing rights society is not eligible by itself to file claims because it does not own the works described in section 1006. However, it could be eligible to file claims if it were authorized by someone who does own a work described in section 1006.

This was explained in the House Report:

Section 1001(7)(D) refers to * * * (4) any association or organization that is 'engaged in licensing rights in musical works to music users on behalf of writers and publishers, i.e., performing rights societies such as ASCAP and BMI. These various associations and organizations are not themselves directly entitled to receive royalties; only those individuals or organizations specified in section 1006(a) receive royalties directly. Nevertheless, these associations and organizations may be designated as common agents to negotiate and receive payment for royalties on behalf of others pursuant to section 1007(a)(2) * * *. For example, with respect to the 50 percent of the Musical Works Fund allocated to writers, writers eligible to file a claim can negotiate among themselves regarding who should receive how much of the 50 percent, or could appoint common agents, for example, one of the interested copyright parties defined in section 1007(7)(D), to negotiate and file claims on their behalf (emphasis ours). H.R. Rep. No. 873, 102nd Cong., 2d Sess. 23

The issue, therefore, is, not whether a performing rights society can file claims by itself. Clearly, it can not. The issue is whether it can file claims on behalf of its members or affiliates based on a rebuttable assumption that its members or affiliates have granted it the authority to do so, or whether a specific, separate,

written authorization to represent a member or affiliate is required.

Previously rulings requiring a performing rights society to obtain specific, separate, written authorizations were based on the fact a performing rights society represent its members or affiliates for the public performing right only, and not for any other right. Because the DART royalty was intended as a compensation for the reproduction right (i.e., home taping), the former Copyright Royalty Tribunal could not conceptually accept the performing rights societies' assertion that they had a right to represent their members or affiliates based on a rebuttable assumption.

However, throughout the rulemaking proceedings for the regulations governing the administration of the AHRA, the performing rights organizations have argued strenuously for a rebuttable presumption of agency which would allow them to file for royalties on behalf of their members or affiliates without specific authorization. The past three filing periods, the former CRT and the Copyright Office granted the presumption for the filing years in question to these organizations for two fundamental reasons: (1) To avoid disenfranchising an unwary claimant, and (2) to grant sufficient time to the performing rights organizations to complete the enormous task of contacting their members and obtaining the necessary authorization.

The Office shares the PROs concern over disenfranchising an unwary claimant, but believes the strength of this argument has steadily diminished over time. Similarly, the Office believes the performing rights organizations have had sufficient time to obtain the proper authorization. In fact, the performing rights organizations have had over two years to meet the requirements of the disputed rule, since it went into effect on October 18, 1993. 58 FR 53822. Therefore, the Office no longer finds these reasons, which are still put forth by the performing rights organizations, see PRO Comment 1 at 4, compelling; and now seeks to equalize the filing process with respect to all organizations and associations that file on behalf of their members.

In support of their position, the performing rights organizations have argued that their members do not distinguish their right to recover royalties under DART from their right to recover royalties under the compulsory licenses, especially in light of the historical practice where a performing rights organization represented its members' interests before the former CRT in cable, satellite, and jukebox