

*BEETHOVEN.COM LLC v. LIBRARIAN OF CONGRESS**394 F.3d 939 (D.C. Cir. 2005)*

The Court of Appeals for the District of Columbia Circuit refused to reverse statutory licensing rates for webcasters set by the Librarian of Congress, finding that the Librarian's rate-setting decisions were not arbitrary and could not be reviewed for "correctness" on appeal.

The DMCA expanded copyright protection to "webcasting" and created a statutory license scheme for webcast performances. The statute provided a six-month open negotiation period for copyright owners and statutory licensees to privately negotiate licensing fees, after which the Librarian of Congress was required to intervene and convene a Copyright Arbitration Royalty Panel (CARP) to set rates approximating the market rates that would have been negotiated between the copyright owners and the statutory licensees. The statutory licenses challenged in this case arose from the CARP proceeding that was instituted to cover rates from October 28, 1998 to December 31, 2002, after the voluntary negotiation period expired. Parties to the CARP proceeding were copyright owners and performers, including the Recording Industry Association of America (RIAA), other industry groups ("Copyright Owners"), and webcasters and simulcasters ("Broadcasters"). The Librarian rejected as arbitrary parts of the recommendations made by CARP, including some of the rounding decisions, and the distinction drawn between radio-transmission and internet-only rates. The Librarian relied on an agreement on record between the RIAA and Yahoo! to establish a minimum fee of \$500, ephemeral recording rates of 8.8 percent of recording fees, and a single broadcasting rate of .07 cents per performance.

Three groups of petitioners challenged the Librarian's decision. Petitioners who were not party to the CARP proceeding ("Non-Participants") challenged the rates set by the Librarian and further argued that the CARP process was a violation of due process and freedom of expression because it excluded small webcasters who could not afford arbitration fees. The court found that the Non-Participants lacked standing under 17 U.S.C. § 802(g) because the language "any aggrieved party" only applies to parties to the proceeding below, so Non-Participants could not intervene.

The Copyright Owners argued that the Librarian arbitrarily set the rates too low because he failed to give sufficient weight to a series of label agreements submitted as evidence to CARP. The Broadcasters, on the other hand, argued that the Librarian arbitrarily set the rates too high be-

cause he did not adjust the licensing fees to reflect real market factors. The court emphasized the “extremely deferential” standard for judicial review of the Librarian’s decisions laid out in *National Association of Broadcasters v. Librarian of Congress*, 146 F.3d 907, 918 (D.C. Cir. 1998), and rejected both Owners’ and Broadcasters’ arguments because they went to the merits of the Librarian’s decisions rather than whether his decision was arbitrary. The court stressed that its role was not to independently weigh the evidence, and that the explanations that the Librarian provided in the Final Rule were “facially plausible,” supported by record evidence, and sufficient to withstand the court’s exceptionally deferential review.

