

witness *in a proceeding to determine royalty rates* to appear and give testimony or to produce and permit inspection of documents or tangible things.” 150 Cong. Rec. S10499 (daily ed. October 6, 2004) (Emphasis added). The final sentence of the relevant subparagraph also stated that “A Copyright Royalty Judge may not issue a subpoena under this clause to any person who was a participant in a proceeding to determine royalty rates and has negotiated a settlement with respect to those rates.” *Id.* However, these two limitations on the CRJs’ subpoena power were amended on the Senate floor. The floor amendment removed the above-referenced final sentence of the relevant subparagraph, which would have prevented the CRJs from issuing a subpoena to any person who had been a participant in a proceeding to determine royalty rates and had negotiated a settlement. The floor amendment also removed any indication that a “witness” must be one “*in a proceeding to determine royalty rates.*” 150 Cong. Rec. S10590 (daily ed. October 6, 2004). The fact that these two restrictions, which are closely analogous to the one SoundExchange currently argues for, were not included in the statute as enacted indicates that Congress did not intend such limitations to be placed on the CRJs’ subpoena power.

The cases cited by SoundExchange are also inapplicable to the current inquiry. *Bobreski v. E.P.A.*, 284 F. Supp.2d 67 (D.D.C. 2003) addressed a statute that specifically withheld any grant of subpoena authority; *United States v. Iannone*, 610 F.2d 943 (D.C. Cir. 1979) spoke solely to the authority to subpoena the attendance and testimony of a witness, versus the mere authority to subpoena documentary information; and *Peters v. United States*, 853 F.2d 692 (9th Cir. 1988) addressed limitations on an administrative agency’s ability to issue a very unique type of subpoena often referred to as “John Doe” subpoenas which are directed in a blanket manner at unidentified targets. The court observed that such subpoenas, which are not at issue here, carry heightened privacy concerns and it was therefore “reluctant to assume the existence of the power to issue third-party subpoenas directed at unidentified targets where Congress has not provided for them specifically, nor provided procedural safeguards.” 853 F.2d 696.

Additionally, the CRJs’ regulations cited by the parties are not instructive in answering the referred question. The question presented to the Register is the breadth of the CRJs’ statutory authority

to issue subpoenas. In answering that question, the statutory language, as well as the relevant legislative history and case law, provide the appropriate authority. Any limitation adopted through regulation by the CRJs regarding their ability to issue subpoenas during the discovery process prior to the consideration of the underlying statutory question cannot inform the Register’s determination as to the scope of the CRJs’ subpoena power under the statute.

Finally, Live355 argues in its reply brief that the CRJs would not need the subpoena power provided in the statute if it extended only to participants and witnesses identified in a party’s direct case. It maintains that the subpoena power would be effectively meaningless under this interpretation since other statutory provisions allow the CRJs to compel testimony from parties and their witnesses, citing 17 U.S.C. 803(b)(6)(C)(v)–(vii). That observation is persuasive. The CRJs can order a participant to provide additional documentation or testimony under their authority to conduct the rate setting proceeding. They do not need subpoena power to compel compliance from a participant. The participant can comply with the order or, should it or its witnesses fail to do so, the CRJs can strike the affected portion of the participant’s testimony. This option is a powerful enforcement mechanism but it only can work with participants and witnesses that voluntarily appear before the CRJs. Subpoena power, on the other hand, allows the CRJs to reach nonparticipants who are not part of the proceeding and it provides the CRJs with tools to compel compliance from persons who are not initially part of the proceedings. While it is true that, as SoundExchange points out, the statutory authority to issue subpoenas is silent with regard to enforcement, that is irrelevant to the inquiry at hand. It is not uncommon for Congress to grant subpoena authority in a statute that contains no stated enforcement mechanism. Where Congress grants subpoena authority in a statute that contains no stated enforcement mechanism, enforcement is achieved through a U.S. district court, and may be sought through the assistance of the United States Attorney’s office. *Office of Legal Policy, U.S. Department of Justice, Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities, Pursuant to Public Law 106-544*, at 9–10 (2002), (available at <http://www.usdoj.gov/archive/index-olp.html>).

For the above-stated reasons, the Register concludes that the CRJs do have the authority to subpoena a witness to appear and give testimony or to produce and permit inspection of documents or tangible things even when that witness is not a participant in the proceeding and his or her testimony has not yet been submitted in the proceeding. This authority is restricted to instances where the resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Additionally, Congress expressly preserved the CRJs’ power to request information from nonparticipants in certain cases when the CRJs do not have the power to issue subpoenas. This power to request information may be invoked in those instances where such testimony is relevant to the resolution of a material issue of fact, even when its absence would not substantially impair the resolution of the proceeding (and, therefore, a subpoena could not be issued). The CRJs have not asked for any determination regarding what may constitute either substantial impairment of resolution of the proceeding or relevance to the resolution of a material issue of fact, and therefore no guidance is offered on those questions. It is, however, pertinent to observe that while the statute grants the CRJs the authority to issue subpoenas in certain circumstances, it does not compel them to issue subpoenas in any circumstance. Furthermore, it is noteworthy that even under the broader grant of subpoena power in the provision initially introduced in the House, Congress stated that it “does not anticipate that the use of subpoena power will become a common occurrence” and that “[t]he CRJs are expected to exercise this power judiciously and only in those instances where they believe a subpoena is necessary to obtain information that the parties have not provided and that the judges deem necessary to make their decision.” H.R. Rep. No. 108–408, at 33 (2004).

February 22, 2010

**Marybeth Peters,**

*Register of Copyrights.*

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BILLING CODE 1410–30–S

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 10–027]

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Brenda Maxwell, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546-0001.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JF000, Washington, DC 20546, (202) 358-4616, [Brenda.Maxwell@nasa.gov](mailto:Brenda.Maxwell@nasa.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

Information collection is required to evaluate bids and proposals from offerors to award contracts for required goods and services in support of NASA's mission.

**II. Method of Collection**

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

**III. Data**

*Title:* NASA acquisition process, bids and proposals for contracts with an estimated value more than \$500,000.

*OMB Number:* 2700-0085.

*Type of review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

*Estimated Number of Respondents:* 1,148.

*Estimated Annual Responses:* 1,148.

*Estimated Time per Response:* 600 hours.

*Estimated Total Annual Burden*

*Hours:* 688,800.

*Estimated Total Annual Cost:* \$0.

**IV. Request for Comments**

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including

whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

**Brenda Maxwell,**

*NASA PRA Clearance Officer.*

[FR Doc. 2010-5997 Filed 3-18-10; 8:45 am]

**BILLING CODE P**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 10-029]

**Notice of Information Collection**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Brenda Maxwell, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546-0001.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JF000, Washington, DC 20546, (202) 358-4616, [Brenda.Maxwell@nasa.gov](mailto:Brenda.Maxwell@nasa.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

Information collection is required to evaluate bids and proposals from offerors to award contracts with an estimated value less than \$500,000 for required goods and services in support of NASA's mission.

**II. Method of Collection**

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

**III. Data**

*Title:* NASA acquisition process, bids and proposals for contracts with an estimated value less than \$500,000.

*OMB Number:* 2700-0087.

*Type of review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

*Estimated Number of Respondents:* 3,772.

*Estimated Annual Responses:* 3,772.

*Estimated Time per Response:* 325 hours.

*Estimated Total Annual Burden*

*Hours:* 1,225,900.

*Estimated Total Annual Cost:* \$0.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

**Brenda Maxwell,**

*NASA PRA Clearance Officer.*

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**BILLING CODE P**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 10-30]

**Notice of Information Collection**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).