

§ 251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the CARP's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a CARP, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

§ 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (*voir dire*).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the CARP expands the witness's testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the hearing without leave from the CARP. See § 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the panel sustains an objection; no separate motion will be required.

(h) If the panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The CARP shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this