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# Code of Federal Regulations

## Title 37—Patents, Trademarks, and Copyrights

Copyright Office regulations codified in the *Code of Federal Regulations* (CFR). These regulations are also known as Circular 96.

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Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

## **§ 201.1 Communication with the Copyright Office.**

(a) General purpose addresses. Members of the public must use the correct address in order to facilitate timely receipt by the copyright division or section to which an inquiry should be directed. The following addresses may be used for general inquiries made to a particular division or section of the Copyright Office. Addresses for special, limited purposes are provided below in paragraph (b) of this section. Anyone who is not certain where a particular inquiry should be directed, should inquire about the proper address through the “Contact us” section on the Office's Web site ( <http://www.copyright.gov> ) or call the Public Information Office at (202) 707-3000.

(1) In general. Mail and other communications which do not come under the areas listed in paragraph (a) or (b) of this section shall be addressed to the Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000.

(2) Inquiries to Licensing Division. Inquiries about filings related to the compulsory licenses (17 U.S.C. 111, 112, 114, 115, 118, 119, 122 and chapter 10) should be addressed to the Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

(3) Copies of records or deposits. Requests for copies of records or deposits for use in litigation or other authorized purposes should be addressed to the Records Research and Certification Section, LM-455, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6302.

(4) Search of records. Requests for searches of registrations and recordings in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Records Research and Certification Section, LM-455, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6306. Records dating from January 1, 1978, forward are available for searching on the Copyright Office's Web site at <http://www.copyright.gov>: COHM, which includes information on all registrations except serials; COHD, which includes information on recordings; and COHS, which includes information on serials.

(b) Limited purpose addresses. The following addresses may be used only in the special, limited circumstances given for a particular Copyright Office service:

(1) Time sensitive requests. Freedom of Information (FOIA) requests; notices of filing of copyright infringement lawsuits; 3 comments for rulemaking proceedings; requests for Copyright Office speakers; requests for approvals of computer generated application forms; requests for expedited service from either the Records Research and Certification Section to meet the needs of pending or prospective litigation, customs matters or contract or publishing deadlines should be addressed to: Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024-0400.

3 All litigation material is time sensitive and must be addressed to the appropriate section of the Copyright Office; the Office is also publishing new regulations governing legal process.

(2) Notices of termination . Notices of termination submitted for recordation should be mailed to Copyright Office, Notices of Termination, P.O. Box 71537, Washington, DC 20024-1537.

[69 FR 39331, June 30, 2004, as amended at 73 FR 37838, July 2, 2008; 74 FR 12556, Mar. 25, 2009]

## **§ 201.2 Information given by the Copyright Office.**

(a) In general. (1) Information relative to the operations of the Copyright Office is supplied without charge. A search of the records, indexes, and deposits will be made for such information as they may contain relative to copyright claims upon application and payment of the statutory fee. The Copyright Office, however, does not undertake the making of comparisons of copyright deposits to determine similarity between works.

(2) The Copyright Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information.

(3) In the administration of the Copyright Act in general, the Copyright Office interprets the Act. The Copyright Office, however, does not give specific legal advice on the rights of persons, whether in connection with particular uses of copyrighted works, cases of alleged foreign or domestic copyright infringement, contracts between authors and publishers, or other matters of a similar nature.

(b) Inspection and copying of records. (1) Inspection and copying of completed records and indexes relating to a registration or a recorded document, and inspection of copies or identifying

material deposited in connection with a completed copyright registration may be undertaken in the Records Research and Certification Section. Since some of these materials are not stored on the immediate premises of the Copyright Office, it is advisable to consult the Certifications and Documents Section to determine the length of time necessary to produce the requested materials.

(2) It is the general policy of the Copyright Office to deny direct public access to in-process files and to any work (or other) areas where they are kept. However, direct public use of computers intended to access the automated equivalent of limited portions of these files is permitted on a specified terminal in the Records Management Section, LM B-14, Monday through Friday, upon payment of applicable fees.

(3) Information contained in Copyright Office in-process files may be obtained by anyone upon payment of applicable fees and request to the Information and Records Division, in accordance with the following procedures:

(i) In general, all requests by the public for information in the in-process and open unfinished business files should be made to the Records Research and Certification Section, which upon receipt of applicable fees will give a report that provides the following for each request:

(A) The date(s) of receipt of:

( 1 ) The application(s) for registration that may have been submitted and is (are) in process;

( 2 ) The document(s) that may have been submitted for recordation and is (are) in process;

( 3 ) The copy or copies (or phonorecords) that may have been submitted;

(B) The title of the work(s); and

(C) The name of the remitter.

(ii) Such searches of the in-process files will be given priority to the extent permitted by the demands of normal work flow of the affected sections of the Copyright Office.

(4) Access will be afforded as follows to pending applications for registration, the deposit material accompanying them, and pending documents for recordation that were submitted within the twelve month period immediately preceding the request for access:

(i) In the case of applications for registration and deposits accompanying them, upon the request of the copyright claimant or his/her authorized representative, and

(ii) In the case of documents, upon the request of at least one of the persons who executed the document or by an authorized representative of that person.

These requests should be made to the Copyright Information Section, and the review of the materials will be permitted there. No charge will be made for reviewing these materials; the appropriate search fee identified in § 201.3(c) or § 201.3(d) will be assessed, and the appropriate copying fee identified in § 201.3(c) or § 201.3(d) will be assessed if the claimant wants and is entitled to a copy of the material.

(5) In exceptional circumstances, the Register of Copyrights may allow inspection of pending applications and open correspondence files by someone other than the copyright claimant, upon submission of a written request which is deemed by the Register to show good cause for such access and establishes that the person making the request is one properly and directly concerned. The written request should be addressed to Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

(6) Direct public access will not be permitted to any financial or accounting records, including records maintained on Deposit Accounts.

(7) The Copyright Office maintains administrative staff manuals referred to as its “Compendium of Office Practices I” and “Compendium of Office Practices II” for the general guidance of its staff in making registrations and recording documents. The manuals, as amended and supplemented from time to time, are available for purchase from the National Technical Information Service (Compendium I) and the Government Printing Office (Compendium II). They are also available for public inspection and copying in the Records Research and Certifications Section. As the Office updates and revises certain chapters of Compendium II, it will make the information available on the Copyright Office's Web site. This information is also available for public inspection and copying in the Records Research and Certifications Section.

(c) Correspondence. (1) Official correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office, and directly relating to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused is available for public inspection. Included in the correspondence available for public inspection is that portion of the file directly relating to a completed registration, recorded document, a rejected application for registration, or a document for which recordation was refused which was once open to public inspection as a closed case, even if the case is subsequently reopened. Public inspection is available only for the correspondence contained in the file during the time it was closed because of one of the aforementioned actions. Correspondence relating to the reopening of the file and reconsideration of the case is considered part of an in-process file until final action is taken, and public inspection of that correspondence is governed by § 201.2(b). Requests for reproductions of the correspondence shall be made pursuant to paragraph (d) of this section.

(2) Correspondence, application forms, and any accompanying material forming a part of a pending application are considered in-process files and access to them is governed by paragraph (b) of this section.

(3) Correspondence, memoranda, reports, opinions, and similar material relating to internal matters of personnel and procedures, office administration, security matters, and internal consideration of policy and decisional matters including the work product of an attorney, are not open to public inspection.

(4) The Copyright Office will not respond to any abusive or scurrilous correspondence or correspondence where the intent is unknown.

(d) Requests for copies. (1) Requests for copies of records should include the following:

(i) A clear identification of the type of records desired (for example, additional certificates of registration, copies of correspondence, copies of deposits).

(ii) A specification of whether the copies are to be certified or uncertified.

(iii) A clear identification of the specific records to be copied. Requests should include the following specific information, if possible:

(A) The type of work involved (for example, novel, lyrics, photograph);

(B) The registration number;

(C) The year date or approximate year date of registration;

- (D) The complete title of the work;
  - (E) The author(s) including any pseudonym by which the author may be known; and
  - (F) The claimant(s); and
  - (G) If the requested copy is of an assignment, license, contract, or other recorded document, the volume and page number of the recorded document.
- (iv) If the copy requested is an additional certificate of registration, include the fee. The Records Research and Certifications Section will review requests for copies of other records and quote fees for each.
- (v) The telephone number and address of the requestor.

(2) Requests for certified or uncertified reproductions of the copies, phonorecords, or identifying material deposited in connection with a copyright registration of published or unpublished works in the custody of the Copyright Office will be granted only when one of the following three conditions has been met:

(i) The Copyright Office receives written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the exclusive rights in the copyright as long as this ownership can be demonstrated by written documentation of the transfer of ownership.

(ii) The Copyright Office receives a written request from an attorney on behalf of either the plaintiff or defendant in connection with litigation, actual or prospective, involving the copyrighted work. The following information must be included in such a request:

(A) The names of all the parties involved and the nature of the controversy;

(B) The name of the court in which the actual case is pending or, in the case of a prospective proceeding, a full statement of the facts of the controversy in which the copyrighted work is involved; and

(C) Satisfactory assurance that the requested reproduction will be used only in connection with the specified litigation.

(iii) The Copyright Office receives a court order for reproduction of the deposited copies, phonorecords, or identifying material of a registered work which is the subject of litigation. The order must be issued by a court having jurisdiction of the case in which the reproduction is to be submitted as evidence.

(3) When a request is made for a reproduction of a phonorecord, such as an audiotape or cassette, in which either a sound recording or the underlying musical, dramatic, or literary work is embodied, the Copyright Office will provide proximate reproduction. The Copyright Office reserves the right to substitute a monaural reproduction for a stereo, quadraphonic, or any other type of fixation of the work accepted for deposit.

[50 FR 30170, July 24, 1985, as amended at 51 FR 30062, Aug. 22, 1986; 62 FR 35421, July 1, 1997; 64 FR 29520, June 1, 1999; 69 FR 39332, June 30, 2004; 69 FR 70377, Dec. 6, 2004; 73 FR 37838, July 2, 2008]

## § 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

(a) General. This section prescribes the fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Registration, recordation, and related service fee. This is the fee for a registration or recordation service that the Office is required to perform under 17 U.S.C., or a directly related service. It includes those services described in section 708(a)(1)-(9) and authorized by Pub. L. 105-80.

(2) Special service fee. This is a fee for a special service not specified in title 17, which the Register of Copyrights may fix at any time on the basis of the cost of providing the service, as provided by 17 U.S.C. 708(a).

(3) Licensing Division service fee. This is a fee for a service performed by the Licensing Division.

(c) Registration, recordation and related service fees. The Copyright Office has established the following fees for these services:

<b>Registration, Recordation and Related Services</b>	<b>Fees</b>
(1) Registration of a basic claim in an original work of authorship:	
Electronic Filing	\$35
Forms PA, SR, TX, VA, SE	65
(2) Registration of a claim in a group of contributions to periodicals (Form GR/CP), published photographs, or database updates:	
Electronic filing of automated databases that predominantly consist of photographs and updates thereto or group registration of published photographs	35
Forms GR/CP, PA, SR, VA and SE (paper filing)	65
(3) Registration of a renewal claim (Form RE):	
Claim without Addendum	115
Addendum	220



(4) Registration of a claim in a group of serials (Form SE/Group)(per issue, minimum 2 issues)	25
(5) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN)	80
(6) Registration of a claim in a restored copyright (Form GATT)	65
(7) Preregistration of certain unpublished works	11 5
(8) Registration of a correction or amplification to a claim (Form CA and Form DC)	10 0
(9) Registration of a claim in a mask work (Form MW)	10 5
(10) Registration of a claim in a vessel hull (Form D/VH)	22 0
(11) Providing an additional certificate of registration	35
(12) Certification of other Copyright Office records (per hour)	16 5
(13) Search report prepared from official records (per hour) (minimum: 2 hours)	16 5
Estimate of search fee	11 5
(14) Location and retrieval of Copyright Office materials or records (per hour)	16 5
Fee for location and retrieval of electronic records (per quarter hour) (minimum: 1/2 hour)	41. 25
(15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title)	10 5
Additional titles (per group of 10 titles)	30
(16) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under § 512(c)(2) (single name)	10 5
Additional domain names (per group of 10)	30

(17) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) (single title)	60
Additional titles (per group of 10)	20
(18) Issuance of a receipt for § 407 deposit	30

(d) Special Service Fees. The Copyright Office has established the following fees for special services:

<b>Special Services</b>	<b>Fees</b>
(1) Service charge for deposit account overdraft	\$165
(2) Service charge for dishonored deposit account replenishment check	85
(3) Service charge for an uncollectible or non-negotiable check	25
(4) Appeals:	
(i) First appeal	250
Additional claim in related group	25
(ii) Second appeal	500
Additional claim in related group	25
(5) Secure test processing charge (per hour)	165
(6) Copying of Copyright Office records by staff:	
Photocopy (b&w, 8 1/2 × 11) (per page, minimum \$12)	0.50
Photocopy (b&w, 11 × 17) (per page, minimum \$12)	1
Photocopy (color, 8 1/2 × 11) (per page, minimum \$12)	2
Photocopy (color, 11 × 17) (per page, minimum \$12)	4
Photograph (Polaroid)	15
Photograph (digital)	45
Slide	3

Audiocassette (first 30 minutes)	75
Additional 15 minute increments	20
Videocassette (first 30 minutes)	75
Additional 15 minute increments	25
CD or DVD	100
Zip or floppy disk	100
(7) Special handling fee for a claim	760
Additional fee for each claim using the same deposit	50
(8) Special handling fee for recordation of a document	480
(9) Handling fee of extra deposit copy for certification	45
(10) Full-term retention of a published deposit	470
(11) Expedited search report service (per hour) (minimum 2 hours)	445
(12) Expedited location and retrieval, certification, and copying services (surcharge, per hour)	265
(13) Notice to Libraries and Archives	50
Each additional title	20
(14) Service charge for Federal Express mailing	40
(15) Service charge for delivery of documents via facsimile (per page, 7 page maximum)	1

(e) Licensing Division service fees. The Copyright Office has established the following fees for certain services performed by the Licensing Division:

<b>Licensing Division Services</b>	<b>Fees</b>
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) (single title)	\$60
Additional titles (per group of 10)	20
(2) Recordation of a licensing agreement for use of certain works in connection with noncommercial broadcasting (17 U.S.C. 118)	140

(3) Recordation of certain contracts by cable TV systems located outside the 48 contiguous states	50
(4) Amendment to Statement of Account filed pursuant to 17 U.S.C. 111, 119 or 1003)	10 0
(5) Notice of Digital Transmission of Sound Recording (17 U.S.C. 112 and 114)	25
Amended Notice of Digital Transmission of Sound Recording	25
(6) Photocopy of record by staff (b&w) (per page) (minimum \$12)	0.5 0
(7) Search and report services (per hour)	16 5
(8) Certification of search report (per hour)	16 5

(f) Fees for travel in connection with educational activities. For travel expenses in connection with Copyright Office educational activities when participation by Copyright Office personnel has been requested by another organization or person and that organization or person has agreed to pay such expenses, collection of the fee shall be subject to, and the amount of the fee shall be no greater than, the amount authorized under the Federal Travel Regulations found in Chapters 300 through 304 of Title 41.

[64 FR 29520, June 1, 1999, as amended at 64 FR 36574, July 7, 1999; 65 FR 39819, June 28, 2000; 67 FR 38005, May 31, 2002; 71 FR 31090, June 1, 2006; 71 FR 46402, Aug. 14, 2006; 72 FR 33691, June 19, 2007; 74 FR 12556, Mar. 25, 2009, 74 FR 32807, July 9, 2009; 77 FR 18705, Mar. 28, 2012; 77 FR 18707, Mar. 28, 2012]

## **§ 201.4 Recordation of transfers and certain other documents.**

[Link to an amendment published at 77 FR 71103, November 29, 2012.](#)

(a) General. (1) This section prescribes conditions for the recordation of transfers of copyright ownership and other documents pertaining to a copyright under section 205 of title 17 of the United States Code, as amended by Pub. L. 94-553. The filing or recordation of the following documents is not within the provisions of this section:

(i) Certain contracts entered into by cable systems located outside of the 48 contiguous States (17 U.S.C. 111(e); see 37 CFR 201.12);

(ii) Notices of identity and signal carriage complement, and statements of account of cable systems and satellite carriers and for digital audio recording devices and media (17 U.S.C. 111(d), 119(b) and 1003(c); see 37 CFR 201.11; 201.17; 201.28);

- (iii) Original, signed notices of intention to obtain compulsory license to make and distribute phonorecords of nondramatic musical works (17 U.S.C. 115(b); see 37 CFR 201.18);
- (iv) License agreements, and terms and rates of royalty payments, voluntarily negotiated between one or more public broadcasting entities and certain owners of copyright (17 U.S.C. 118; see 37 CFR 201.9);
- (v) Notices of termination (17 U.S.C. 203, 304(c) and (d); see 37 CFR 201.10); and
- (vi) Statements regarding the identity of authors of anonymous and pseudonymous works, and statements relating to the death of authors (17 U.S.C. 302).

(2) A transfer of copyright ownership has the meaning set forth in section 101 of title 17 of the United States Code, as amended by Pub. L. 94-553. A document shall be considered to “pertain to a copyright” if it has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

(3) For purposes of this section:

- (i) A sworn certification is an affidavit under the official seal of any officer authorized to administer oaths within the United States, or if the original is located outside of the United States, under the official seal of any diplomatic or consular officer of the United States or of a person authorized to administer oaths whose authority is proved by the certificate of such an officer, or a statement in accordance with section 1746 of title 28 of the United States Code; and
- (ii) An official certification is a certification, by the appropriate Government official, that the original of the document is on file in a public office and that the reproduction is a true copy or the original.

(b) Forms. The Copyright Office does not provide forms for the use of persons recording documents.

(c) Recordable documents. Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(1) To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other legible facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the parties to the signed document, or by an authorized representative of that person.

(2) To be recordable, the document must be complete by its own terms.

(i) A document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached to the document or made a part of it shall be recordable only if the attachment is also submitted for recordation with the document or if the reference is deleted by the parties to the document. If a document has been submitted for recordation and has been returned by the Copyright Office at the request of the sender for deletion of the reference to an attachment, the document will be recorded only if the deletion is signed or initialed by the

persons who executed the document or by their authorized representatives. In exceptional cases a document containing a reference to an attachment will be recorded without the attached material and without deletion of the reference if the person seeking recordation submits a written request specifically asserting that:

- (A) The attachment is completely unavailable for recordation; and
- (B) The attachment is not essential to the identification of the subject matter of the document; and
- (C) It would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference.

In such exceptional cases, the Copyright Office records of the document will be annotated to show that recordation was made in response to a specific request under this paragraph.

(ii) If a document otherwise recordable under this title indicates on its face that it is a self-contained part of a larger instrument (for example: if it is designated “Attachment A” or “Exhibit B”), the Copyright Office will raise the question of completeness, but will record the document if the person requesting recordation asserts that the document is sufficiently complete as it stands.

(iii) When the document submitted for recordation merely identifies or incorporates by reference another document, or certain terms of another document, the Copyright Office will raise no question of completeness, and will not require recordation of the other document.

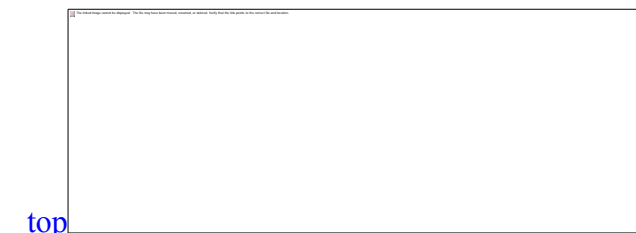
(3) To be recordable, the document must be legible and capable of being imaged or otherwise reproduced in legible copies by the technology employed by the Office at the time of submission.

(d) Fees. The fees for recordation of a document are prescribed in § 201.3(c).

(e) Recordation. The date of recordation is the date when a proper document under paragraph (c) of this section and a proper fee under paragraph (d) of this section are all received in the Copyright Office. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 205, 702, 708)

[43 FR 35044, Aug. 8, 1978, as amended at 53 FR 123, Jan. 5, 1988; 56 FR 59885, Nov. 26, 1991; 64 FR 29521, June 1, 1999; 65 FR 39819, June 28, 2000; 67 FR 69136, Nov. 15, 2002; 70 FR 38022, July 1, 2005; 74 FR 12556, Mar. 25, 2009]



## **§ 201.5 Corrections and amplifications of copyright registrations; applications for supplementary registration.**

(a) General. (1) This section prescribes conditions relating to the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the

information given in a registration, under section 408(d) of title 17 of the United States Code, as amended by Pub. L. 94-553. For the purposes of this section:

(i) A basic registration means any of the following:

(A) A copyright registration made under sections 408, 409, and 410 of title 17 of the United States Code, as amended by Pub. L. 94-553;

(B) A renewal registration made under section 304 of title 17 of the United States Code, as so amended;

(C) A registration of claim to copyright made under title 17 of the United States Code as it existed before January 1, 1978; or

(D) A renewal registration made under title 17 of the United States Code as it existed before January 1, 1978; and

(ii) A supplementary registration means a registration made upon application under section 408(d) of title 17 of the United States Code, as amended by Pub. L. 94-553, and the provisions of this section.

(2) No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this § 201.5. As an exception, where it is discovered that the record of a basic registration contains an error that the Copyright Office itself should have recognized at the time registration was made, the Office will take appropriate measures to rectify its error.

(b) Persons entitled to file an application for supplementary registration; grounds of application.

(1) Supplementary registration can be made only if a basic copyright registration for the same work has already been completed. After a basic registration has been completed, any author or other copyright claimant of the work, or the owner of any exclusive right in the work, or the duly authorized agent of any such author, other claimant, or owner, who wishes to correct or amplify the information given in the basic registration for the work may file an application for supplementary registration. 1

1 If the person who, or on whose behalf, an application for supplementary registration is submitted is the same as the person identified as the copyright claimant in the basic registration, the Copyright Office will place a note referring to the supplementary registration on its records of the basic registration.

(2) Supplementary registration may be made either to correct or to amplify the information in a basic registration. For the purposes of this section:

(i) A correction is appropriate if information in the basic registration was incorrect at the time that basic registration was made, and the error is not one that the Copyright Office itself should have recognized;

(ii) An amplification is appropriate:

(A) To supplement or clarify the information that was required by the application for the basic registration and should have been provided, such as the identity of a co-author or co-claimant, but was omitted at the time the basic registration was made, or

(B) To reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that have occurred since the basic registration was made.

(iii) Supplementary registration is not appropriate:

(A) As an amplification, to reflect a change in ownership that occurred on or after the effective date of the basic registration or to reflect the division, allocation, licensing or transfer of rights in a work; or

(B) To correct errors in statements or notices on the copies of phonorecords of a work, or to reflect changes in the content of a work; and

(iv) Where a basic renewal registration has been made for a work during the last year of the relevant first-term copyright, supplementary registration to correct the renewal claimant or basis of claim or to add a renewal claimant is ordinarily possible only if the application for supplementary registration and fee are received in the Copyright Office within the last year of the relevant first-term copyright. If the error or omission in a basic renewal registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim, supplementary registration may be made at any time. In an exceptional case, however, supplementary registration may be made to correct the name of the renewal claimant and the legal basis of the claim at any time if clear, convincing, objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration.

(c) Form and content of application for supplementary registration. (1) An application for supplementary registration shall be made on a form prescribed by the Copyright Office, shall be accompanied by the appropriate fee identified in § 201.3(c) and shall contain the following information:

(i) The title of the work as it appears in the basic registration, including previous or alternative titles if they appear;

(ii) The registration number of the basic registration;

(iii) The year when the basic registration was completed;

(iv) The name or names of the author or authors of the work, and the copyright claimant or claimants in the work, as they appear in the basic registration;

(v) In the case of a correction:

(A) The line number and heading or description of the part of the basic registration where the error occurred;

(B) A transcription of the erroneous information as it appears in the basic registration;

(C) A statement of the correct information as it should have appeared; and

(D) If desired, an explanation of the error or its correction;

(vi) In the case of an amplification:

(A) The line number and heading or description of the part of the basic registration where the information to be amplified appears;

(B) A clear and succinct statement of the information to be added; and

(C) If desired, an explanation of the amplification;

(vii) The name and address:

(A) To which correspondence concerning the application should be sent; and

(B) To which the certificate of supplementary registration should be mailed; and



(viii) The certification shall consist of:

(A) The handwritten signature of the author, other copyright claimant, or owner of exclusive right(s) in the work, or of the duly authorized agent of such author, other claimant or owner (who shall also be identified);

(B) The typed or printed name of the person whose signature appears, and the date of signature; and

(C) A statement that the person signing the application is the author, other copyright claimant, or owner of exclusive right(s) in the work, or the authorized agent of such author, other claimant, or owner, and that the statements made in the application are correct to the best of that person's knowledge.

(2) The form prescribed by the Copyright Office for the foregoing purposes is designated "Application for Supplementary Copyright Registration (Form CA)". Copies of the form are available free upon request to the Copyright Information Section, Library of Congress, Copyright Office, 101 Independence Avenue, SE, Washington, DC 20559-6000.

(3) Copies, phonorecords or supporting documents cannot be made part of the record of a supplementary registration and should not be submitted with the application.

(d) Effect of supplementary registration. (1) When a supplementary registration is completed, the Copyright Office will assign it a new registration number in the appropriate class, and issue a certificate of supplementary registration under that number.

(2) As provided in section 408(d) of title 17, the information contained in a supplementary registration augments but does not supersede that contained in the basic registration. The basic registration will not be expunged or cancelled.

(Pub. L. 94-553; 17 U.S.C. 205, 408(d), 601(b), 702, 708)

[43 FR 773, Jan. 4, 1978, as amended at 56 FR 59885, Nov. 26, 1991; 57 FR 60482, Dec. 21, 1992; 60 FR 34168, June 30, 1995; 62 FR 35421, July 1, 1997; 63 FR 59236, Nov. 3, 1998; 63 FR 66042, Dec. 1, 1998; 64 FR 29521, June 1, 1999; 65 FR 39819, June 28, 2000; 65 FR 48914, Aug. 10, 2000; 66 FR 34372, June 28, 2001; 73 FR 37838, July 2, 2008]

## **§ 201.6 Payment and refund of Copyright Office fees.**

(a) In general. All fees sent to the Copyright Office should be in the form of a money order, check or bank draft payable to the Register of Copyrights. Coin or currency sent to the Office in letters or packages will be at the remitter's risk. Remittances from foreign countries should be in the form of an International Money Order or Bank Draft payable and immediately negotiable in the United States for the full amount of the fee required. Uncertified checks are accepted subject to collection. Where the statutory fee is submitted in the form of a check, the registration of the copyright claim or other record made by the Office is provisional until payment in money is received. In the event the fee is not paid, the registration or other record shall be expunged.

(b) Deposit accounts. (1) Persons or firms having 12 or more transactions a year with the Copyright Office may prepay copyright expenses by establishing a Deposit Account. The Office and the Deposit Account holder will cooperatively determine an appropriate minimum balance

for the Deposit Account which, in no case, can be less than \$450, and the Office will automatically notify the Deposit Account holder when the account goes below that balance.

(2) The Copyright Office will close a Deposit Account the second time the Deposit Account holder overdraws his or her account within any 12-month period. An account closed for this reason can be re-opened only if the holder elects to fund it through automatic replenishment.

(3) In order to ensure that a Deposit Account's funds are sufficiently maintained, a Deposit Account holder may authorize the Copyright Office to automatically replenish the account from the holder's bank account or credit card. The amount by which a Deposit Account will be replenished will be determined by the deposit account holder. Automatic replenishment will be triggered when the Deposit Account goes below the minimum level of funding established pursuant to paragraph (b)(1) of this section, and Deposit Account holders will be automatically notified that their accounts will be replenished. Funding through automatic replenishment is required if a Deposit Account holder, who has had an account closed because it has been overdrawn twice within any 12 month period, wishes to re-open the account.

(c) Refunds. (1) Money remitted to the Copyright Office for basic, supplementary or renewal registration, including mask works and vessel hulls, will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the fee will be refunded, but amounts of \$50 or less will not be refunded unless specifically requested, and refunds of less than \$2 may be made in postage stamps. Except for services specified in paragraphs (c)(2) and (3) of this section, before making any refund for fees remitted in relation to non-registration copyright services, the Copyright Office shall deduct an administrative processing fee in an amount equivalent to one hour of the requested service, or the minimum charge for the service.

(2) In instances where money has been remitted to pay for recordation of a document, and it is determined that the document cannot be recorded, the basic recordation fee covering one title will be retained as a filing fee. Any additional money over the basic fee for one title will be refunded, but amounts of \$50 or less will not be refunded unless specifically requested, and refunds of less than \$2 may be made in postage stamps.

(3) For services where fees are calculated on an hourly basis, such as preparation of a search report, certification of certain Copyright Office records, or location and retrieval of records, in instances where the request is withdrawn before work is begun by the staff member responsible for providing the service, the Copyright Office will retain half of the hourly charge for administrative expenses, and refund the remaining portion of the fee subject to paragraph (c)(1) of this section. In addition, the fee for an estimate of a search fee is non-refundable. This policy applies to requests to the Records, Research and Certification Section, and requests to the Licensing Division.

(d) Return of deposit copies. Copies of works deposited in the Copyright Office pursuant to law are either retained in the Copyright Office, transferred for the permanent collections or other uses of the Library of Congress, or disposed of according to law. When an application is rejected, the Copyright Office reserves the right to retain the deposited copies.

(17 U.S.C. 702, 708(c))

[24 FR 4955, June 18, 1959, as amended at 46 FR 25442, May 7, 1981; 56 FR 7813, Feb. 26, 1991; 59 FR 38371, July 28, 1994; 74 FR 32809, July 9, 2009; 76 FR 9231, Feb. 17, 2011]

## **§ 201.7 Cancellation of completed registrations.**

(a) Definition. Cancellation is an action taken by the Copyright Office whereby either the registration is eliminated on the ground that the registration is invalid under the applicable law and regulations, or the registration number is eliminated and a new registration is made under a different class and number.

(b) General policy. The Copyright Office will cancel a completed registration only in those cases where:

(1) It is clear that no registration should have been made because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining copyright;

(2) Registration may be authorized but the application, deposit material, or fee does not meet the requirements of the law and Copyright Office regulations, and the Office is unable to get the defect corrected; or

(3) An existing registration in the wrong class is to be replaced by a new registration in the correct class.

(c) Circumstances under which a registration will be cancelled. (1) Where the Copyright Office becomes aware after registration that a work is not copyrightable, either because the authorship is de minimis or the work does not contain authorship subject to copyright, the registration will be cancelled. The copyright claimant will be notified by correspondence of the proposed cancellation and the reasons therefor, and be given 30 days, from the date the Copyright Office letter is mailed, to show cause in writing why the cancellation should not be made. If the claimant fails to respond within the 30 day period, or if the Office after considering the response, determines that the registration was made in error and not in accordance with title 17 U.S.C., Chapters 1 through 8, the registration will be cancelled.

(2) When a check received in payment of a registration fee is returned to the Copyright Office marked "insufficient funds" or is otherwise uncollectible the Copyright Office will immediately cancel any registration(s) for which the dishonored check was submitted and will notify the remitter the registration has been cancelled because the check was returned as uncollectible.

(3) Where registration is made in the wrong class, the Copyright Office will cancel the first registration, replace it with a new registration in the correct class, and issue a corrected certificate.

(4) Where registration has been made for a work which appears to be copyrightable but after registration the Copyright Office becomes aware that, on the administrative record before the Office, the statutory requirements have apparently not been satisfied, or that information essential to registration has been omitted entirely from the application or is questionable, or correct deposit material has not been deposited, the Office will correspond with the copyright claimant in an attempt to secure the required information or deposit material or to clarify the information previously given on the application. If the Copyright Office receives no reply to its correspondence within 30 days of the date the letter is mailed, or the response does not resolve the substantive defect, the registration will be cancelled. The correspondence will include the

reason for the cancellation. The following are instances where a completed registration will be cancelled unless the substantive defect in the registration can be cured:

- (i) Eligibility for registration has not been established;
  - (ii) A work published before March 1, 1989, was registered more than 5 years after the date of first publication and the deposit copy or phonorecord does not contain a statutory copyright notice;
  - (iii) The deposit copies or phonorecords of a work published before January 1, 1978 do not contain a copyright notice or the notice is defective;
  - (iv) A renewal claim was registered after the statutory time limits for registration had apparently expired;
  - (v) The application and copy(s) or phonorecord(s) do not match each other and the Office cannot locate a copy or phonorecord as described in the application elsewhere in the Copyright Office or the Library of Congress;
  - (vi) The application for registration does not identify a copyright claimant or it appears from the transfer statement on the application or elsewhere that the “claimant” named in the application does not have the right to claim copyright;
  - (vii) A claim to copyright is based on material added to a preexisting work and a reading of the application in its totality indicates that there is no copyrightable new material on which to base a claim;
  - (viii) A work subject to the manufacturing provisions of the Act of 1909 was apparently published in violation of those provisions;
  - (ix) For a work published after January 1, 1978, the only claimant given on the application was deceased on the date the application was certified;
  - (x) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified; and
  - (xi) Statements on the application conflict or are so unclear that the claimant cannot be adequately identified.
- (d) Minor substantive errors. Where a registration includes minor substantive errors or omissions which would generally have been rectified before registration, the Copyright Office will attempt to rectify the error through correspondence with the remitter. Except in those cases enumerated in paragraph (c) of this section, if the Office is unable for any reason to obtain the correct information or deposit copy, the registration record will be annotated to state the nature of the informality and show that the Copyright Office attempted to correct the registration.

[50 FR 40835, Oct. 7, 1985, as amended at 60 FR 34168, June 30, 1995; 65 FR 39819, June 28, 2000; 66 FR 34372, June 28, 2001]

## **§ 201.8 Disruption of postal or other transportation or communication services.**

- (a) For purposes of 17 U.S.C. 709, when the Register has determined that there is or has been a general disruption or suspension of postal or other transportation or communications services

that has delayed the receipt by the Copyright Office of deposits, applications, fees, or any other materials, the Register shall publish an announcement of that determination, stating the date on which the disruption or suspension commenced. The announcement may, if appropriate, limit the means of delivery that are subject to relief pursuant to section 709. Following the cessation of the disruption or suspension of services, the Register shall publish an announcement stating the date on which the disruption or suspension has terminated.

(b) At the request of any person who provides satisfactory evidence that he or she has attempted to deliver a deposit, application, fee or other material to the Copyright Office but that receipt by the Copyright Office was delayed due to a general disruption or suspension of postal or other transportation or communications services, the Register shall assign, as the date of receipt of the deposit, application, fee or other material, the date on which the Register determines the material would have been received but for the disruption or suspension of services, if the deposit, application, fee or other material was actually received in the Copyright Office within one month after the disruption or suspension of services has terminated.

(c) Timing. The request shall be made:

(1) With respect to an application for copyright registration, no earlier than the date on which the claimant receives the certificate of registration and no later than one year after the date on which the claimant receives the certificate of registration; provided, however, that a request may be made prior to receipt of a certificate of registration—

(i) If the Copyright Office has communicated with the claimant relating to the application and the claimant makes the request as part of a response to the communication from the Office; or

(ii) If the Register determines that good cause exists to entertain a request prior to the issuance of a certificate of registration;

(2) With respect to a transfer of copyright ownership or other document submitted for recordation pursuant to 17 U.S.C. 205, no later than one year after the date on which the person submitting the transfer or document receives the certificate of recordation;

(3) With respect to any other material, no later than one year after the date on which the material was actually received in the Copyright Office.

(d) In cases in which a certificate or registration or a certificate of recordation has already been issued, the original certificate must be returned to the Copyright Office along with the request.

(e) For purposes of paragraph (b) of this section, satisfactory evidence shall consist of:

(1) A receipt from the United States Postal Service indicating the date on which the United States Postal Service received material for delivery to the Copyright Office by means of first class mail, Priority Mail or Express Mail;

(2) A receipt from a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, indicating the date on which the delivery service received material for delivery to the Copyright Office and

(i) The date on which delivery was to be made to the Copyright Office, or

(ii) The period of time (e.g., overnight, or 2 days) from receipt by the delivery service to the date on which delivery was to be made to the Copyright Office;

(3) Other documentary evidence which the Register deems equivalent to the evidence set forth in paragraphs (e)(1) and (2) of this section; or

(4) A sworn statement from a person with actual knowledge of the facts relating to the attempt to deliver the material to the Copyright Office, setting forth with particularity facts which satisfy the Register that in the absence of the general disruption or suspension of postal or other transportation or communications services, the material would have been received by the Copyright Office by a particular date.

(f) For purposes of paragraph (b) of this section, the Register shall presume that but for the general disruption or suspension of postal or other transportation or communications services,

(1) Materials deposited with the United States Postal Service for delivery by means of first class mail would have been received in the Copyright Office seven days after deposit with the United States Postal Service;

(2) Materials deposited with the United States Postal Service for delivery by means of Priority mail would have been received in the Copyright Office three days after deposit with the United States Postal Service;

(3) Materials deposited with the United States Postal Service for delivery by means of Express mail would have been received in the Copyright Office one day after deposit with the United States Postal Service;

(4) Materials deposited with a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, would have been received in the Copyright Office on the date indicated on the receipt from the delivery service.

(g) Requests pursuant to paragraph (b) of this section shall be addressed to: Chief, Copyright Office Receipt, Analysis and Control Division, Copyright Office, and if delivered by hand they should be brought to the Copyright Information Section, Library of Congress, James Madison Memorial Building, Room 401, First and Independence Avenue, SE., Washington, DC. If mailed, the request should be addressed to Chief, Receipt, Analysis and Control Division, P.O. Box 71380, Washington, DC 20024-1380.

[66 FR 62944, Dec. 4, 2001; 66 FR 63920, Dec. 11, 2001; 73 FR 37838, July 2, 2008]

## **§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.**

(a) License agreements voluntarily negotiated between one or more owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works, and one or more public broadcasting entities, and terms and rates of royalty payments agreed to among owners of copyright in nondramatic literary works and public broadcasting entities will be filed in the Copyright Office, Licensing Division by recordation upon payment of the fee prescribed by § 201.3. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of agreement; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one

of the parties to the agreement, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the agreement, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 118.

(b) The fee for recordation of a voluntary license agreement under this section is the basic recordation fee as prescribed in § 201.3(c).

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office, and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 207 and 17 U.S.C. 118, 702, 708(11), as amended by Pub. L. 94-553)

[42 FR 16777, Mar. 30, 1977, as amended at 46 FR 33249, June 29, 1981; 56 FR 59885, Nov. 26, 1991; 64 FR 29521, June 1, 1999]

## **§ 201.10 Notices of termination of transfers and licenses.**

This section covers notices of termination of transfers and licenses under sections 203, 304(c) and 304(d) of title 17, of the United States Code. A termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939.

(a) Form. The Copyright Office does not provide printed forms for the use of persons serving notices of termination.

(b) Contents. (1) A notice of termination covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C., must include a clear identification of each of the following:

(i) Whether the termination is made under section 304(c) or under section 304(d);

(ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(iii) The title and the name of at least one author of, and the date copyright was originally secured in, each work to which the notice of termination applies; and, if possible and practicable, the original copyright registration number;

(iv) A brief statement reasonably identifying the grant to which the notice of termination applies;

(v) The effective date of termination;

(vi) If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised; and

(vii) In the case of a termination of a grant executed by a person or persons other than the author, a listing of the surviving person or persons who executed the grant. In the case of a termination

of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304 of title 17, U.S.C., or by their duly authorized agents.

(2) A notice of termination of an exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, under section 203 of title 17, U.S.C., must include a clear identification of each of the following:

(i) A statement that the termination is made under section 203;

(ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(iii) The date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant;

(iv) For each work to which the notice of termination applies, the title of the work and the name of the author or, in the case of a joint work, the authors who executed the grant being terminated; and, if possible and practicable, the original copyright registration number;

(v) A brief statement reasonably identifying the grant to which the notice of termination applies;

(vi) The effective date of termination; and

(vii) In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (b)(2)(vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 203 of title 17, U.S.C., or by their duly authorized agents.



(3) Clear identification of the information specified by paragraphs (b)(1) and (b)(2) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

(c) Signature. (1) In the case of a termination of a grant under section 304(c) or section 304(d) executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant under section 304(c) or section 304(d) executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) In the case of a termination of a grant under section 203 executed by one or more of the authors of the work, the notice shall be signed by each author who is terminating the grant or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 203 of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(4) Where a signature is by a duly authorized agent, it shall clearly identify the person or persons on whose behalf the agent is acting.

(5) The handwritten signature of each person effecting the termination shall either be accompanied by a statement of the full name and address of that person, typewritten or printed legibly by hand, or shall clearly correspond to such a statement elsewhere in the notice.

(d) Service. (1) The notice of termination shall be served upon each grantee whose rights are being terminated, or the grantee's successor in title, by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.

(2) The service provision of section 203, section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

(i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or

(ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

(3) For purposes of paragraph (d)(2) of this section, a reasonable investigation includes, but is not limited to, a search of the records in the Copyright Office; in the case of a musical composition with respect to which performing rights are licensed by a performing rights society, a "reasonable investigation" also includes a report from that performing rights society identifying the person or persons claiming current ownership of the rights being terminated.

(4) Compliance with the provisions of paragraphs (d)(2) and (d)(3) of this section will satisfy the service requirements of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) Harmless errors. (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or (b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) Recordation. (1) A copy of the notice of termination will be recorded in the Copyright Office upon payment of the fee prescribed by paragraph (2) of this paragraph (f) and upon compliance with the following provisions:

(i) The copy submitted for recordation shall be a complete and exact duplicate of the notice of termination as served and shall include the actual signature or signatures, or a reproduction of the actual signature or signatures, appearing on the notice; where separate copies of the same notice were served on more than one grantee or successor in title, only one copy need be submitted for recordation; and

(ii) The copy submitted for recordation shall be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice. In instances where service is made by first-class mail, the date of service shall be the day the notice of termination was deposited with the United States Postal Service.

(iii) The copy submitted for recordation must be legible per the requirements of § 201.4(c)(3).

(2) The fee for recordation of a document is prescribed in § 201.3(c).

(3) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee and, if required, the statement referred to in paragraph (f)(1)(ii) of this section, have been received in the Copyright Office. After recordation, the document, including any accompanying statement, is returned to the sender with a certificate of record.

(4) Notwithstanding anything to the contrary in this section, the Copyright Office reserves the right to refuse recordation of a notice of termination as such if, in the judgment of the Copyright Office, such notice of termination is untimely. Conditions under which a notice of termination will be considered untimely include: the effective date of termination does not fall within the five-year period described in section 203(a)(3) or section 304(c)(3), as applicable, of title 17, United States Code; or the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination. If a notice of termination is untimely or if a document is submitted for recordation as a notice of termination on or after the effective date of termination, the Office will offer to record the document as a “document pertaining to copyright” pursuant to § 201.4(c)(3), but the Office will not index the document as a notice of termination.

(5) In any case where an author agreed, prior to January 1, 1978, to a grant of a transfer or license of rights in a work that was not created until on or after January 1, 1978, a notice of termination of a grant under section 203 of title 17 may be recorded if it recites, as the date of execution, the date on which the work was created.

(6) A copy of the notice of termination shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect. However, the fact that the Office has recorded the notice does not mean that it is otherwise sufficient under the law. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met, including before a court of competent jurisdiction.

(7) Notices of termination should be submitted to the address specified in § 201.1(b)(2).

(Pub. L. 94-553; 17 U.S.C. 304(c), 702, 708(11))

[42 FR 45920, Sept. 13, 1977, as amended at 56 FR 59885, Nov. 26, 1991; 60 FR 34168, June 30, 1995; 64 FR 29521, June 1, 1999; 64 FR 36574, July 7, 1999; 66 FR 34372, June 28, 2001; 67 FR 69136, Nov. 15, 2002; 67 FR 78176, Dec. 23, 2002; 68 FR 16959, Apr. 8, 2003; 71 FR 36486, June 27, 2006; 74 FR 12556, Mar. 25, 2009; 76 FR 32320, June 6, 2011]

## **§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.**

(a) General. This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by the satellite carrier license of section 119(b)(1) and Section 122(a) of title 17 of the United States Code, as amended by Pub. L. No. 111-175, in order that certain secondary transmissions by satellite carriers for private home viewing be subject to statutory licensing.

(b) Definitions . (1) The terms distributor, network station, private home viewing, satellite carrier, subscribe, subscriber, non-network station, unserved household, primary stream, and multicast stream , have the meanings set forth in Section 119(d) of title 17 of the United States Code, as amended by Pub. L. No. 111-175.

(2) The terms primary transmission and secondary transmission have the meanings set forth in section 111(f) of title 17 of the United States Code.

(c) Accounting periods and deposit. (1) Statements of Account shall cover semiannual accounting periods of January 1 through June 30, and July 1 through December 31, and shall be deposited in the Copyright Office, together with the total statutory royalty fee or the confirmed arbitration royalty fee for such accounting periods as prescribed by section 119(b)(1)(B) and (c)(3) of title 17, by not later than July 30, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following January 30, if the Statement of Account covers the July 1 through December 31 accounting period.

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division of the Copyright Office will examine the statement and fee for obvious errors or omissions appearing on the face of the documents, and

will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the result of communications between the Copyright Office and the satellite carrier, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a statutory license have been satisfied.

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of July 30 or January 30, respectively, will be accepted for whatever legal effect they may have, if any.

(4) In the Register's discretion, four years after the close of any calendar year, the Register may close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

(d) Forms. (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557-6400.

(2) The form prescribed by the Copyright Office is designated "Statement of Account for Secondary Transmissions by Satellite Carriers to Home Viewers."

(e) Contents. Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner" followed by:

(i) The full legal name of the satellite carrier. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner;

(ii) Any other name or names under which the owner conducts the business of the satellite carrier; and

(iii) The full mailing address of the owner. Ownership, other names under which the owner conducts the business of the satellite carrier, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.

(3) The designation "Primary Transmitters," followed by the call signs, broadcast channel numbers, station locations (city and state of license), and a notation whether that primary transmitter is a "non-network station" or "network station" transmitted to any or all of the subscribers of the satellite carrier during any portion of the period covered by the Statement of Account.

(4) The designation “non-network station,” followed by:

(i) The call sign of each non-network station signal carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each non-network station for each month of the period covered by the Statement. This number is the number of subscribers to each non-network station receiving the retransmission on the last day of each month.

(5) The designation “Network Stations,” followed by:

(i) The call sign of each network station carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each network station for each month of the period covered by the Statement. This number is the number of subscribers to each network station receiving the retransmission on the last day of each month.

(6) The total number of subscribers to each non-network station for the six-month period covered by the Statement multiplied by the statutory royalty rate prescribed in § 258.3 of this chapter.

(7) The total number of subscribers to each network station for the six-month period covered by the Statement multiplied by the statutory royalty rate prescribed in § 258.3 of this chapter.

(8) The name, address, business title, and telephone number of the individual or individuals to be contacted for information or questions concerning the content of the Statement of Account.

(9) The handwritten signature of:

(i) The owner of the satellite carrier or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or

(ii) A partner, if the owner is a partnership; or

(iii) An officer of the corporation, if the owner is a corporation. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the Statement of Account;

(B) The date of signature;

(C) If the owner of the satellite carrier is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Statement of Account;

(D) A certification of the capacity of the person signing; and

(E) The following statement:

I, the undersigned Owner or Agent of the Satellite Carrier, or Officer or Partner, if the Satellite Carrier is a Corporation or Partnership, have examined this Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(18 U.S.C., section 1001 (1986))

(f) Royalty fee payment . (1) All royalty fees shall be paid by a single electronic funds transfer and payment must be received in the designated bank by the filing deadline for the relevant accounting period. The following information shall be provided as part of the EFT and/or as part of the remittance advice as provided for in circulars issued by the Copyright Office:

- (i) Remitter's name and address;
  - (ii) Name of a contact person, telephone number and extension, and email address;
  - (iii) The actual or anticipated date that the EFT will be transmitted;
  - (iv) Type of royalty payment ( i.e. , satellite);
  - (v) Total amount submitted via the EFT;
  - (vi) Total amount to be paid by year and period;
  - (vii) Number of Statements of Account that the EFT covers;
  - (viii) ID numbers assigned by the Licensing Division;
  - (ix) Legal name of the owner for each Statement of Account.
- (2) The remittance advice shall be attached to the Statement(s) of Account. In addition, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Division.
- (3) The Office may waive the requirement for payment by electronic funds transfer as set forth in paragraph (f)(1) of this section. To obtain a waiver, the remitter shall submit to the Licensing Division at least 60 days prior to the royalty fee due date a certified statement setting forth the reasons explaining why payment by an electronic funds transfer would be virtually impossible or, alternatively, why it would impose a financial or other hardship on the remitter. The certified statement must be signed by a duly authorized representative of the entity making the payment. A waiver shall cover only a single payment period. Failure to obtain a waiver may result in the remittance being returned to the remitter.
- (g) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.
- (h) Corrections, supplemental payments, and refunds. (1) Upon compliance with the procedures and within the time limits set forth in paragraph (h)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:
- (i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete; or
  - (ii) Where calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.
- (2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a signal) took place later.
- (3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (h)(1) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:
- (i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the

last day of the applicable Statement of Account filing period, or before the expiration of 30 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. A telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 30-day period, and if a written request meeting all the conditions of this paragraph (h)(3) is also received in the Copyright Office within 14 days after the end of such 30-day period:

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the satellite carrier and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

(A) In the case of a request filed under paragraph (h)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information:

(B) In the case of a request filed under paragraph (h)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 28 of the United States Code, made and signed in accordance with paragraph (e)(9) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv)(A) All requests filed under this paragraph (h) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (h) must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of certified check, cashier's check, or money order, payable to: Register of Copyrights; or electronic payment. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (h) must be signed by the satellite carrier owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(9) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the time limitations provided for in paragraph (h)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (h) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in

this paragraph shall be considered to relieve satellite carriers from their full obligations under title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(i) Interest . (1) Royalty fee payments submitted as a result of late or amended filings will include interest. Interest will begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing and viewing in commercial establishments occurring within that accounting period. The accrual period shall end on the date the electronic payment submitted by a satellite carrier is received by the Copyright Office. In cases where a waiver of the electronic funds transfer requirement is approved by the Copyright Office, and royalties payments are either late or underpaid, the accrual period shall end on the date the payment is postmarked. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of the actual receipt by the Copyright Office.

(2)(i) The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the Federal Register , in effect on the first business day after the close of the filing deadline for that accounting period. Satellite carriers wishing to obtain the interest rate for a specific accounting period may do so by consulting the Federal Register for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(ii) The interest rate applicable to a specific accounting period earlier than the 1992/2 period shall be the rate fixed by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.11(h) in effect on June 30, 1992.

(3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

[54 FR 27877, July 3, 1989, as amended at 55 FR 49998, Dec. 4, 1990; 56 FR 29589, June 28, 1991; 57 FR 61834, Dec. 29, 1992; 59 FR 67635, Dec. 30, 1994; 60 FR 34168, June 30, 1995; 60 FR 57937, Nov. 24, 1995; 63 FR 30635, June 5, 1998; 64 FR 36574, July 7, 1999; 70 FR 30366, May 26, 2005; 70 FR 38022, July 1, 2005; 71 FR 45739, Aug. 10, 2006; 72 FR 33691, June 19, 2007; 73 FR 29072, May 20, 2008; 75 FR 56872, Sept. 17, 2010]

## **§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous States.**

(a) Written, nonprofit contracts providing for the equitable sharing of costs of videotapes and their transfer, as identified in section 111(e)(2) of title 17 of the United States Code as amended by Pub. L. 94-553, will be filed in the Copyright Office Licensing Division by recordation upon payment of the prescribed fee. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of contract; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one



of the parties to the contract, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the contract, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 111(e).

(b) The fee for recordation of a document is prescribed in § 201.3.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(Pub. L. 94-553; 17 U.S.C. 111, 702, 708(11))

[42 FR 53961, Oct. 4, 1977, as amended at 56 FR 59885, Nov. 26, 1991; 64 FR 29521, June 1, 1999]

## **§ 201.13 Notices of objection to certain noncommercial performances of nondramatic literary or musical works.**

(a) Definitions. (1) A Notice of Objection is a notice, as required by section 110(4) of title 17 of the United States Code as amended by Pub. L. 94-553, to be served as a condition of preventing the noncommercial performance of a nondramatic literary or musical work under certain circumstances.

(2) For purposes of this section, the copyright owner of a nondramatic literary or musical work is the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared), or a person or organization that has obtained ownership of the exclusive right, initially owned by the author of performance of the type referred to in 17 U.S.C. 110(4). If the other requirements of this section are met, a Notice of Objection may cover the works of more than one copyright owner.

(b) Form. The Copyright Office does not provide printed forms for the use of persons serving Notices of Objection.

(c) Contents. (1) A Notice of Objection must clearly state that the copyright owner objects to the performance, and must include all of the following:

(i) Reference to the statutory authority on which the Notice of Objection is based, either by citation of 17 U.S.C. 110(4) or by a more general characterization or description of that statutory provision;

(ii) The date and place of the performance to which an objection is being made; however, if the exact date or place of a particular performance, or both, are not known to the copyright owner, it is sufficient if the Notice describes whatever information the copyright owner has about the date

and place of a particular performance, and the source of that information unless the source was considered private or confidential;

(iii) Clear identification, by title and at least one author, of the particular nondramatic literary or musical work or works, to the performance of which the copyright owner thereof is lodging objection; a Notice may cover any number of separately identified copyrighted works owned by the copyright owner or owners serving the objection. Alternatively, a blanket notice, with or without separate identification of certain copyrighted works, and purporting to cover one or more groups of copyrighted works not separately identified by title and author, shall have effect if the conditions specified in paragraph (c)(2) of this section are met; and

(iv) A concise statement of the reasons for the objection.

(2) A blanket notice purporting to cover one or more groups of copyrighted works not separately identified by title and author shall be valid only if all of the following conditions are met:

(i) The Notice shall identify each group of works covered by the blanket notice by a description of any common characteristics distinguishing them from other copyrighted works, such as common author, common copyright owner, common publisher, or common licensing agent;

(ii) The Notice shall identify a particular individual whom the person responsible for the performance can contact for more detailed information about the works covered by the blanket notice and to determine whether a particular work planned for performance is in fact covered by the Notice. Such identification shall include the full name and business and residence addresses of the individual, telephone numbers at which the individual can be reached throughout the period between service of the notice and the performance, and name, addresses, and telephone numbers of another individual to contact during that period in case the first cannot be reached.

(iii) If the copyright owner or owners of all works covered by the blanket notice is not identified in the Notice, the Notice shall include an offer to identify, by name and last known address, the owner or owners of any and all such works, upon request made to the individual referred to in paragraph (c)(2)(ii) of this section.

(3) A Notice of Objection must also include clear and prominent statements explaining that:

(i) A failure to exclude the works identified in the Notice from the performance in question may subject the person responsible for the performance to liability for copyright infringement; and

(ii) The objection is without legal effect if there is no direct or indirect admission charge for the performance, and if the other conditions of 17 U.S.C. 110(4) are met.

(d) Signature and identification. (1) A Notice of Objection shall be in writing and signed by each copyright owner, or such owner's duly authorized agent, as required by 17 U.S.C. 110(4)(B)(i).

(2) The signature of each owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(3) If a Notice of Objection is initially served in the form of a telegram or similar communication, as provided by paragraph (e) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) Service. (1) A Notice of Objection shall be served on the person responsible for the performance at least seven days before the date of the performance, as provided by 17 U.S.C. 110 (4)(B)(ii).

(2) Service of the Notice may be effected by any of the following methods:

(i) Personal service;

(ii) First-class mail;

(iii) Telegram, cablegram, or similar form of communication, if:

(A) The Notice meets all of the other conditions provided by this section; and

(B) Before the performance takes place, the person responsible for the performance receives written confirmation of the Notice, bearing the actual handwritten signature of each copyright owner or duly authorized agent.

(3) The date of service is the date the Notice of Objection is received by the person responsible for the performance or any agent or employee of that person.

(Pub. L. 94-553; 17 U.S.C. 110(4), 702)

[42 FR 64684, Dec. 28, 1977]

## **§ 201.14 Warnings of copyright for use by certain libraries and archives.**

(a) Definitions. (1) A Display Warning of Copyright is a notice under paragraphs (d)(2) and (e)(2) of section 108 of title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the “Display Warning of Copyright” is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An Order Warning of Copyright is a notice under paragraphs (d)(2) and (e)(2) of section 108 of title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the “Order Warning of Copyright” is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) Contents. A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

### **notice warning concerning copyright restrictions**

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or

research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) Form and manner of use. (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

(Pub. L. 94-553; 17 U.S.C. 108, 702)

[42 FR 59265, Nov. 16, 1977]

## **§ 201.16 [Reserved]**

## **§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.**

(a) General. This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by section 111(d)(2) of title 17 of the United States Code in order for secondary transmissions of cable systems to be subject to compulsory licensing.

(b) Definitions. (1) Gross receipts for the “basic service of providing secondary transmissions of primary broadcast transmitters” include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission. All such gross receipts shall be aggregated and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.

(2) A cable system is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other

communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a “cable system” for copyright purposes, even if the FCC excludes it from being considered a “cable system” because of the number or nature of its subscribers or the nature of its secondary transmissions. The Statements of Account and royalty fees to be deposited under § 201.17 of this section, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees. For these purposes, and the purpose of § 201.17 of this section, an “individual” cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either:

(i) In contiguous communities under common ownership or control or

(ii) Operating from one headend.

(3) FCC means the Federal Communications Commission.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is “generally receivable” if:

(i) It is usually carried by the system whenever it is received at the system's headend, and

(ii) As a result of monitoring at reasonable times and intervals, it can be expected to be received at the system's headend, with the system's FM antenna, at least three consecutive hours each day at the same time each day, five or more days a week, for four or more weeks during any calendar quarter, with a strength of not less than fifty microvolts per meter measured at the foot of the tower or pole to which the antenna is attached.

(5) The terms primary transmission, secondary transmission, local service area of a primary transmitter, distant signal equivalent, network station, independent station, noncommercial educational station, primary stream, multicast stream, simulcast, primary transmitter, subscriber, and subscribe have the meanings set forth in Section 111(f) of title 17 of the United States Code, as amended by Pub. L. No. 94-553, Pub. L. No. 103-369, and Pub. L. No. 111-175.

(6) A primary transmitter is a “distant” station, for purposes of this section, if the programming of such transmitter is carried by the cable system in whole or in part beyond the local service area of such primary transmitter.

(7) A translator station is, with respect to programs both originally transmitted and retransmitted by it, a primary transmitter for the purposes of this section. A translator station which retransmits the programs of a network station will be considered a network station; a translator station which retransmits the programs of an independent station shall be considered an independent station; and a translator station which retransmits the programs of a noncommercial educational station shall be considered a noncommercial educational station. The determination of whether a translator station should be identified as a “distant” station depends on the local service area of the translator station.

(8) For purposes of this section, the “rules and regulations of the FCC in effect on October 19, 1976,” which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and § 76.63 (referring to § 76.61(b)(2)), deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).

(9) For purposes of this section, the “rules and regulations of the FCC”, which require a cable system to omit the retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.

(10) For purposes of this section, a cable system “lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry” only if:

(i) All of its activated television channels are used exclusively for the secondary transmission of television signals; and

(ii) The number of primary television transmitters secondarily transmitted by the cable system exceeds the number of its activated television channels.

(c) Accounting periods and deposit. (1) Statements of Account shall cover semiannual accounting periods of (i) January 1 through June 30, and (ii) July 1 through December 31, and shall be deposited in the Copyright Office, together with the total royalty fee for such accounting periods as prescribed by section 111(d)(1) (B), (C), or (D) of title 17, by not later than the immediately following August 29, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following March 1, if the Statement of Account covers the July 1 through December 31 accounting period.

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such Statement and fee were physically received in the Copyright Office. Thereafter, the Office will examine the Statement and fee for obvious errors or omissions appearing on the face of the documents, and will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the result of communications between the Copyright Office and the cable system, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a compulsory license have been satisfied.

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

(4) In the Register's discretion, four years after the close of any calendar year, the Register may, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

(d) Forms. (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of distant signal equivalents and the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557-6400.

(2) The forms prescribed by the Copyright Office are designated "Statement of Account for Secondary Transmissions By Cable Systems":

(i) Form SA1-2—"Short Form" for use by cable systems whose semiannual gross receipts for secondary transmission total less than \$527,600; and

(ii) Form SA3—"Long Form" for use by cable systems whose semiannual gross receipts for secondary transmission total \$527,600 or more.

(e) Contents. Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner," followed by:

(i) The full legal name of the owner of the cable system. The owner of the cable system is the individual or entity that provides the retransmission service and collects payment from the end user either directly or indirectly through a third party. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner;

(ii) Any other name or names under which the owner conducts the business of the cable system; and

(iii) The full mailing address of the owner.

Ownership, other names under which the owner conducts the business of the cable system, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.

(3) The designation "System," followed by:

(i) Any business or trade names used to identify the business and operation of the system, unless these names have already been given under the designation "Owner"; and

(ii) The full mailing address of the system, unless such address is the same as the address given under the designation "Owner".

Business or trade names used to identify the business and operation of the system, and the system's mailing address, shall reflect the facts existing on the last day of the accounting period covered by the Statement of Account.

(4) The designation "Area Served", followed by the name of the community or communities served by the system. For this purpose a "community" is the same as a "community unit" as defined in FCC rules and regulations.

(5) The designation "Channels," followed by:

(i) The number of channels, including multicast streams on which the cable system made secondary transmissions to its subscribers, and

(ii) The cable system's total activated channel capacity, in each case during the period covered by the Statement.

(iii) A multicast stream is considered a channel for purposes of this section

(6) The designation "Secondary Transmission Service: Subscribers and Rates", followed by:

(i) A brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters;

(ii) The number of subscribers to the cable system in each such subscriber category; and

(iii) The charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions. Standard rate variations within a particular category should be summarized; discounts allowed for advance payment should not be included. For these purposes:

(A) The description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the Statement; and

(B) Each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber.

(7) The designation "Gross Receipts", followed by the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions of primary broadcast transmissions during the period covered by the Statement of Account. If the cable system maintains its revenue accounts on an accrual basis, gross receipts for any accounting period includes all such amounts accrued for secondary transmission service furnished during that period, regardless of when accrued:

(i) Less the amount of any bad debts actually written-off during that accounting period, excluding bad debts for secondary transmission service furnished before January 1, 1978;

(ii) Plus the amount of any previously written-off bad debts for secondary transmission service which were actually recovered during that accounting period, excluding bad debt recoveries for secondary transmission service furnished before January 1, 1978.

If the cable system maintains its revenue accounts on a cash basis, gross receipts for any accounting period includes all such amounts actually received by the cable system during that accounting period, excluding amounts paid for secondary transmission service furnished before January 1, 1978; however, amounts received before January 1, 1978, for secondary transmission service furnished after that date, are to be considered as if they had been received during the accounting period in which the service covered by such payments was furnished.

(8) The designation "Services Other Than Secondary Transmissions: Rates," followed by a description of each package of service which consists solely of services other than secondary transmission services, for which a separate charge was made or established, and which the cable system furnished or made available to subscribers during the period covered by the Statement of Account, together with the amount of such charge. However, no information need be given concerning services furnished at cost. Specific amounts charged for pay cable programming need not be given if the rates are on a variable, per-program basis. (The fact of such variable charge shall be indicated.)



(9) The designation “Primary Transmitters: Television”, followed by an identification of all primary television transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, other than primary transmitters of programs carried by the cable system exclusively pursuant to rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting the substitution of signals under certain circumstances, and required to be specially identified by paragraph (e)(11) of this section, together with the information listed below:

(i) The station call sign of the primary transmitter.

(ii) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iii) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iv) A designation as to whether that primary transmitter is a “network station”, an “independent station”, or a “noncommercial educational station”.

(v) A designation as to whether that primary transmitter is a “distant” station.

(vi) If that primary transmitter is a “distant” station, a specification of whether the signals of that primary transmitter are carried:

(A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or

(B) On any other basis.

If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.

(vii) A designation as to whether the channel carried is a multicast stream, and if so, the sub-channel number assigned to that stream by the television broadcast licensee.

(viii) Simulcasts must be reported and labeled on the Statement of Accounts form in an easily identifiable manner (e.g., WETA-simulcast).

(ix) The information indicated by paragraph (e)(9), paragraphs (v) through (viii) of this section, is not required to be given by any cable system that appropriately completed Form SA1-2 for the period covered by the Statement.

(x) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations in effect on October 19, 1976 which permitted carriage of specific network programs on a part-time basis in certain circumstances (former 47 CFR 76.59 (d) (2) and (4), 76.61(e) (2) and (4), and 76.63, referring to § 76.61(e) (2) and (4), all of which were deleted June 25, 1981), carriage of that primary transmitter on that

basis need not be reported, and that carriage is to be excluded in computing the distant signal equivalent of that primary transmitter.

(10) The designation "Primary Transmitters: Radio", followed by an identification of primary radio transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, together with the information listed below:

(i) A designation as to whether each primary transmitter was electronically processed by the system as a separate and discrete signal.

(ii) The station call sign of each:

(A) AM primary transmitter;

(B) FM primary transmitter, the signals of which were electronically processed by the system as separate and discrete signals; and

(C) FM primary transmitter carried on an all-band retransmission basis, the signals of which were generally receivable by the system.

(iii) A designation as to whether the primary transmitter is AM or FM.

(iv) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(11) A special statement and program log, which shall consist of the information indicated below for all nonnetwork television programming that, during the period covered by the Statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under (i) rules or regulations of the FCC requiring a cable system to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission; or (ii) rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:

(A) The name or title of the substitute program.

(B) Whether the substitute program was transmitted live by its primary transmitter.

(C) The station call sign of the primary transmitter of the substitute program.

(D) The name of the community to which the primary transmitter of the substitute program is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(E) The date when the secondary transmission of the substitute program occurred, and the hours during which such secondary transmission occurred on that date accurate to the nearest 5 minutes.

(F) A designation as to whether deletion of the omitted program was permitted by the rules, regulations, or authorizations of the FCC in effect on October 19, 1976, or was required by the rules, regulations, or authorizations of the FCC.

(12) A statement of the total royalty fee payable for the period covered by the Statement of Account, together with a royalty fee analysis which gives a clear, complete, and detailed presentation of the determination of such fee. This analysis shall present in appropriate sequence

all facts, figures, and mathematical processes used in determining such fee, and shall do so in such manner as required in the appropriate form so as to permit the Copyright Office to verify readily, from the face of the Statement of Account, the accuracy of such determination and fee. The royalty fee analysis is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement of Account, for the basic service of providing secondary transmissions of primary broadcast transmissions, total \$137,100 or less.

(13) The name, address, and telephone number of an individual who may be contacted by the Copyright Office for further information about the Statement of Account.

(14) The handwritten signature of:

(i) The owner of the cable system or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or

(ii) A partner, if the owner is a partnership; or

(iii) An officer of the corporation, if the owner is a corporation. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the Statement of Account;

(B) The date of signature;

(C) If the owner of the cable system is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Statement of Account;

(D) A certification of the capacity of the person signing; and

(E) A declaration of the veracity of the statements of fact contained in the Statement of Account and the good faith of the person signing in making such statement of fact.

(f) Computation of distant signal equivalents. (1) A cable system that elects to delete a particular television program and substitute for that program another television program ("substitute program") under rules, regulations, or authorizations of the FCC in effect on October 19, 1976, which permit a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place shall compute the distant signal equivalent ("DSE") of each primary transmitter that broadcasts one or more substitute programs by dividing:

(i) The number of the primary transmitter's live, nonnetwork, substitute programs that were carried by the cable system, during the period covered by the Statement of Account, in substitution for programs deleted at the option of the system; by

(ii) The number of days in the year in which the substitution occurred.

(2)(i) Where a cable system carries a primary transmitter on a full-time basis during any portion of an accounting period, the system shall compute a DSE for that primary transmitter as if it was carried full-time during the entire accounting period.

(ii) Where a cable system carries a primary transmitter solely on a substitute or part-time basis, in accordance with paragraph (f)(3) of this section, the system shall compute a DSE for that primary transmitter based on its cumulative carriage on a substitute or part-time basis. If that primary transmitter is carried on a full-time basis as well as on a substitute or part-time basis, the full DSE for that primary transmitter shall be the full DSE type value for that primary transmitter, for the entire accounting period.

(3)(i) In computing the DSE of a primary transmitter in a particular case of carriage before July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible “exceptions and limitations” in the definition of “distant signal equivalent” in the fifth paragraph of section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553. Four prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried pursuant to the late-night programming rules of the Federal Communications Commission in effect on the date of carriage;

(B) A station is carried pursuant to the specialty programming rules of the Federal Communications Commission in effect on the date of carriage;

(C) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(D) A station is carried on a “substitute” basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976.

(ii) In computing the DSE of a primary transmitter in a particular case of carriage on or after July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible “exceptions and limitations” in the definition of “distant signal equivalent” in the fifth paragraph of section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553, and which remain in force under that provision. Two prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(B) A station is carried on a “substitute” basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976, which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place.

(4) In computing a DSE, a cable system may round off to the third decimal point. If a DSE is rounded off in any case in a Statement of Account, it must be rounded off throughout the Statement. Where a cable system has chosen to round off, and the fourth decimal point for a particular DSE value would, without rounding off, have been 1, 2, 3, or 4, the third decimal point remains unchanged; if, in such a case, the fourth decimal point would, without rounding off, be 5, 6, 7, 8, or 9, the third decimal point must be rounded off to the next higher number.

(5) For the purposes of computing DSE values, specialty primary television transmitters in the United States and all Canadian and Mexican primary television transmitters shall be assigned a value of one.

(g) Computation of copyright royalty fee: subscriber groups . (1) If a cable system provides a secondary transmission of a primary transmitter to some, but not all, communities served by that cable system—

(i) The gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

(ii) The total royalty fee for the period paid by such system shall not be less than the minimum fee multiplied by the gross receipts from all subscribers to the system.

(2) A cable system that, on a statement submitted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, computed its royalty fee consistent with the methodology under paragraph (i)(1) of this section or that amends a statement filed before such date of enactment to compute the royalty fee due using such methodology, shall not be subject to an action for infringement, or eligible for any royalty refund or offset, arising out of the use of such methodology on such statement.

(3) Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which they are received and shall be distributed as specified under subsection 111(d) of title 17, United States Code. Such payments shall be considered as part of the base rate royalty fund.

(4) The royalty fee rates established by the Satellite Television Extension and Localism Act shall take effect commencing with the first accounting period occurring in 2010.

(h) Computation of the copyright royalty fee: Partially distant stations. A cable system located partly within and partly without the local service area of a primary television transmitter ("partially distant station") computes the royalty fee specified in section 111(d)(1)(B) (ii), (iii), and (iv) of the Copyright Act ("DSE fee") by excluding gross receipts from subscribers located within that station's local service area from total gross receipts. A cable system which carries two or more partially distant stations with local service areas that do not exactly coincide shall compute a separate DSE fee for each group of subscribers who are located outside of the local service areas of exactly the same complement of distant stations. Computation of the DSE fee for each subscriber group is to be based on:

(1) The total distant signal equivalents of that group's complement of distant stations, and

(2) The total gross receipts from that group of subscribers. The copyright royalty fee for that cable system is:

(i) The total of the subscriber group royalty fees thus computed, or

(ii) 1.013 of 1 percent of the system's gross receipts from all subscribers, whichever is larger.

(i) Computation of the copyright royalty fee pursuant to the 1982 cable rate adjustment. (1) For the purposes of this paragraph, in addition to the definitions of paragraph (b) of this section, the following definitions shall also apply:

(i) Current base rate means the applicable royalty rates in effect on December 31, 1982, as reflected in 37 CFR 256.2(a).

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. With respect to statements of account covering the filing period

beginning January 1, 1990, and subsequent filing periods, the current base rate together with the surcharge shall apply only to those DSE's that represent commercial VHF signals which place a predicted Grade B contour, in whole or in part, over a cable system. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

(iii) The 3.75% rate means the rate established by 37 CFR 256.2(c), in effect on March 15, 1983.

(iv) Top 100 television market means a television market defined or interpreted as being within either the "top 50 television markets" or "second 50 television markets" in accordance with 47 CFR 76.51, in effect on June 24, 1981.

(v) The 1982 cable rate adjustment means the rate adjustment adopted by the Copyright Royalty Tribunal on October 20, 1982 (CRT Docket No. 81-2, 47 FR 52146, November 19, 1982).

(vi) The terms DSE or DSE's mean "distant signal equivalent(s)" as defined in 17 U.S.C. 111(f) and any fraction thereof.

(2) A cable system filing Form SA3 shall compute its royalty fee in the following manner:

(i) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 256.2(c) applies.

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. With respect to statements of account covering the filing period beginning January 1, 1990, and subsequent filing periods, the current base rate together with the surcharge shall apply only to those DSE's that represent commercial VHF signals which place a predicted Grade B contour, in whole or in part, over a cable system. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

(iii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(iv) Commencing with the semiannual accounting period of January 1, 1998, through June 30, 1998, the 3.75% rate applies to certain DSE's with respect to the communities within the cable system where carriage would not have been permitted under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, but in all other communities within the cable system, the current base rate and the syndicated exclusivity surcharge, where applicable, shall apply. Such computation shall be made as provided for on Form SA3. The calculations shall be based upon the gross receipts from all subscribers, within the relevant communities, for the basic service of providing secondary transmissions of primary broadcast transmitters, without regard to whether those subscribers actually received the station in question. For partially-distant stations, gross receipts shall be the total gross receipts from subscribers outside the local service area.

(3) A cable system whose semiannual gross receipts for secondary transmissions totalled \$214,000 or more during the period January 1, 1983, through June 30, 1983, shall compute its royalty fee for carriage during that period in the following manner:

(i) Copyright royalty fees must be paid on the basis of carriage for the entire accounting period except where proration of the DSE is permitted as described in paragraph (f)(3) of this section.

(ii) Where a distant signal was carried at any time only between January 1, 1983, and March 14, 1983;

(A) In the case of a cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(B) In case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(iii) Where a distant signal was carried at any time after March 14, 1983;

(A) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 256.2(c) applies.

(B) If the 3.75% rate is applicable to a particular DSE, it shall be applied against the per centum .5967 (representing the number of days from March 15, 1983, through June 30, 1983, inclusive, in relation to the entire accounting period); and either

( 1 ) In the case of a cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge, applied against the per centum .4033 (representing the number of days from January 1, 1983, through March 14, 1983, inclusive, in relation to the entire accounting period); however, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972; or

( 2 ) In the case of a cable system located wholly outside a top 100 television market, the current base rate applied against the per centum .4033.

(C) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(D) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(4)(i) Separate Supplemental DSE Schedules as prescribed by the Copyright Office shall be completed and filed by a cable system affected by the 1982 cable rate adjustment for the accounting periods January 1, 1983, through June 30, 1983 (83-1), and July 1, 1983, through December 31, 1983 (83-2). Each Supplemental DSE schedule shall contain the information required by that form and its accompanying instructions.

(ii) The Supplemental DSE Schedule will be mailed to all cable systems whose gross receipts for secondary transmissions total \$214,000 or more either for accounting period 83-1 or for 83-2, and shall be completed and returned to the Copyright Office with the supplemental royalty fee due, if any, within sixty-five (65) days from the date of mailing by the Copyright Office.

(iii) Cable systems located wholly outside all major and smaller television markets as defined by the FCC are not affected by the 1982 cable rate adjustment. Such systems shall complete a certifying statement provided in the Supplemental DSE Schedule and return it within sixty-five (65) days from the date of mailing by the Copyright Office.

(5)(i) It shall be presumed that the 3.75% rate of 37 CFR 308.2(c) applies to DSE's accruing from newly added distant signals, carried for the first time by a cable system after June 24, 1981.

(ii) The presumption of paragraph (h)(5)(i) of this section can be rebutted in whole or in part:

(A) By actual carriage of a particular distant signal prior to June 25, 1981, as reported in Statements of Account duly filed with the Copyright Office (“actual carriage”), unless the prior carriage was not permitted by the FCC; or

(B) By carriage of no more than the number of distant signals which was or would have been allotted to the cable system under the FCC's quota for importation of network and nonspecialty independent stations (47 CFR 76.59(b), 76.61 (b) and (c) and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981).

(6) To qualify as an FCC-permitted signal on the ground of individual waiver of the FCC rules (47 CFR 76.7 in effect on June 24, 1981), the waiver must have actually been granted by the FCC, and the signal must have been first carried by the cable system after April 15, 1976.

(7) Expanded geographic carriage after June 24, 1981, of a signal previously carried within only certain parts of a cable system is governed by the current base rate and the surcharge, if applicable.

(8) In cases of expanded temporal carriage of the same signal, previously carried pursuant to the FCC's former part-time or substitute carriage rules (47 CFR 76.61(b)(2), 76.61 (e)(1) and (e)(3), and 76.63, referring to 76.61 (e)(1) and (e)(3), in effect on June 24, 1981), the 3.75% rate shall be applied to any additional fraction of a DSE accruing from the expanded temporal carriage of that signal. To identify such additional DSE's, a comparison shall be made of DSE's reported for that signal in any single accounting period prior to the July 1, 1981, to December 31, 1981, period (81-2), as designated by the cable system, with the DSE's for that same signal reported in the current relevant accounting period.

(9) Substitution of like signals pursuant to 37 CFR 256.2(c) is possible at the relevant non-3.75% rate (the surcharge together with the current base rate, or the current base rate alone) only if the substitution does not exceed the number of distant signals which was or would have been allotted to the cable system under the FCC's television market quota for importation of network and nonspecialty independent stations (47 CFR 76.59(b), 76.61 (b) and (c), and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981).

(10) The 3.75% rate does not apply to distant multicast streams retransmitted by cable systems.

(j) Multicasting . (1) A royalty payment shall be made for the retransmission of non-network television programming carried on each multicast stream of a distant digital television signal under the following circumstances:

(i) If the distant multicast stream was first retransmitted by a cable system on or after February 27, 2010, or

(ii) If the distant multicast stream is retransmitted by a cable operator on or after July 1, 2010.

(2) In any case in which a distant multicast stream is the subject of a written agreement entered into on or before June 30, 2009, between a cable system or an association representing the cable system and a primary transmitter or an association representing the primary transmitter, a distant signal equivalent value shall not be assigned to a distant multicast stream that is made on or before the date on which such written agreement expires.



(3) No royalties are due for carrying a distant multicast stream that “simulcasts” (i.e., duplicates) a primary stream or another multicast stream of the same station that the cable system is carrying. However, simulcast streams must be reported on the Statement of Accounts.

(4) Multicast streams of digital broadcast programming shall not be subject to the 3.75% fee or the syndicated exclusivity surcharge.

(k) Royalty fee payment . (1) All royalty fees must be paid by a single electronic funds transfer, and must be received in the designated bank by the filing deadline for the relevant accounting period. The following information must be provided as part of the EFT and/or as part of the remittance advice as provided for in circulars issued by the Copyright Office:

(i) Remitter's name and address;

(ii) Name of a contact person, telephone number and extension, and e-mail address;

(iii) The actual or anticipated date that the EFT will be transmitted;

(iv) Type of royalty payment ( i.e. , cable);

(v) Total amount submitted via the EFT;

(vi) Total amount to be paid by year and period;

(vii) Number of Statements of Account that the EFT covers;

(viii) ID numbers assigned by the Licensing Division;

(ix) Legal name of the owner for each Statement of Account;

(x) Identification of the first community served (city and state).

(2) The remittance advice shall be attached to the Statement(s) of Account. In addition, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Division.

(3) The Office may waive the requirement for payment by electronic funds transfer as set forth in paragraph (i)(1) of this section. To obtain a waiver, the remitter shall submit to the Licensing Division at least 60 days prior to the royalty fee due date a certified statement setting forth the reasons explaining why payment by an electronic funds transfer would be virtually impossible or, alternatively, why it would impose a financial or other hardship on the remitter. The certified statement must be signed by a duly authorized representative of the entity making the payment. A waiver shall cover only a single payment period. Failure to obtain a waiver may result in the remittance being returned to the remitter.

(4) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all late payments and underpayments of royalties for the cable statutory license occurring within that accounting period. The accrual period shall end on the date the electronic payment submitted by a cable operator is received. The accrual period shall end on the date the electronic payment submitted by a satellite carrier is received by the Copyright Office. In cases where a waiver of the electronic funds transfer requirement is approved by the Copyright Office, and royalties payments are either late or underpaid, the accrual period shall end on the date the payment is postmarked. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of the actual receipt by the Copyright Office. Interest is not required to be paid on any royalty

underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars.

(l) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.

(m) Corrections, supplemental payments, and refunds. (1) Upon compliance with the procedures and within the time limits set forth in paragraph (m)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete;

(ii) Where, for any reason except that mentioned in paragraph (m)(1)(iii) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low; or

(iii) Where, for the semiannual accounting period of January 1, 1978, through June 30, 1978, the total royalty fee deposited was incorrect because the cable operator failed to compute royalties attributable to carriage of late-night, specialty, or part-time programming between January 1, 1978, and February 9, 1978.

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a distant signal) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (m)(1) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, or before the expiration of 60 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. A request made by telephone or by telegraphic or similar unsigned communication, will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 60-day period, and if a written request meeting all the conditions of this paragraph (m)(3) is also received in the Copyright Office within 14 days after the end of such 60-day period;

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the cable system, the community or communities served, and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

(A) In the case of a request filed under paragraph (m)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information;

(B) In the case of a request filed under paragraph (m)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations;

(C) In the case of a request filed under paragraph (m)(1)(iii) of this section, the request shall be identified as "Transitional and Supplemental Royalty Fee Payment" and include a detailed analysis of the proper royalty calculations;

(iv)(A) All requests filed under this paragraph (m) (except those filed under paragraph (m)(1)(iii) of this section) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (m), must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, or money order, payable to: Register of Copyrights; or an electronic payment. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (m) must be signed by the cable system owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(14) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the cable system owner named in the Statement of Account without regard to the time limitations provided for in paragraph (m)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (m) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve cable systems from their full obligations under title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(n) Satellite carriers not eligible. Satellite carriers and satellite resale carriers are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code.

(17 U.S.C. 111, 702, 708)

[43 FR 27832, June 27, 1978]

Editorial Note: For Federal Register citations affecting § 201.17, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov)

## **§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.**

[Link to an amendment published at 77 FR 71103, November 29, 2012.](#)

(a) General. (1) A “Notice of Intention” is a Notice identified in section 115(b) of title 17 of the United States Code, and required by that section to be served on a copyright owner or, in certain cases, to be filed in the Copyright Office, before or within thirty days after making, and before distributing any phonorecords of the work, in order to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A person is entitled to serve or file a Notice of Intention and thereby obtain a compulsory license pursuant to 17 U.S.C. 115 only if his primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery.

(3) For the purposes of this section, a “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of time or for a specified number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.

(4) A Notice of Intention shall be served or filed for nondramatic musical works embodied, or intended to be embodied, in phonorecords made under the compulsory license. A Notice of Intention may designate any number of nondramatic musical works, provided that the copyright owner of each designated work or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary. For purposes of this section, a Notice which lists multiple works shall be considered a composite filing of multiple Notices and fees shall be paid accordingly if filed in the Copyright Office under paragraph (f) of this section (i.e., a separate fee, in the amount set forth in § 201.3(e)(1), shall be paid for each work listed in the Notice).

(5) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(6) For the purposes of this section, service of a Notice of Intention on a copyright owner may be accomplished by means of service of the Notice on either the copyright owner or an agent of the copyright owner with authority to receive the Notice. In the case where the work has more than one copyright owner, the service of the Notice on any one of the co-owners of the nondramatic

musical work or upon an authorized agent of one of the co-owners identified in the Notice of Intention shall be sufficient with respect to all co-owners. Notwithstanding paragraph (a)(2) of this section, a single Notice may designate works not owned by the same copyright owner in the case where the Notice is served on a common agent of multiple copyright owners, and where each of the works designated in the Notice is owned by any of the copyright owners who have authorized that agent to receive Notices.

(7) For purposes of this section, a copyright owner or an agent of a copyright owner with authority to receive Notices of Intention may make public a written policy that it will accept Notices of Intention to make and distribute phonorecords pursuant to 17 U.S.C. 115 which include less than all of the information required by this section, in a form different than required by this section, or delivered by means (including electronic transmission) other than those required by this section. Any Notice provided in accordance with such policy shall not be rendered invalid for failing to comply with the specific requirements of this section.

(8) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord manufactured, made, and distributed on the date the phonorecord is digitally transmitted.

(b) Agent. An agent who has been authorized to accept Notices of Intention in accordance with paragraph (a)(4) of this section and who has received a Notice of Intention on behalf of a copyright owner shall provide within two weeks of the receipt of that Notice of Intention the name and address of the copyright owner or its agent upon whom the person or entity intending to obtain the compulsory license shall serve Statements of Account and the monthly royalty in accordance with § 201.19(a)(4).

(c) Form. The Copyright Office does not provide printed forms for the use of persons serving or filing Notices of Intention.

(d) Content. (1) A Notice of Intention shall be clearly and prominently designated, at the head of the notice, as a “Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords,” and shall include a clear statement of the following information:

(i) The full legal name of the person or entity intending to obtain the compulsory license, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(ii) The telephone number, the full address, including a specific number and street name or rural route of the place of business, and an e-mail address, if available, of the person or entity intending to obtain the compulsory license, and if a business organization intends to obtain the compulsory license, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location.

(iii) The information specified in paragraphs (d)(1)(i) and (ii) of this section for the primary entity expected to be engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution (for example: a record company or digital music service), if an entity intending to obtain the compulsory license is a holding company, trust or other entity that is not expected to be actively engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution;

- (iv) The fiscal year of the person or entity intending to obtain the compulsory license. If that fiscal year is a calendar year, the Notice shall state that this is the case;
- (v) For each nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license:
- (A) The title of the nondramatic musical work;
  - (B) The name of the author or authors, if known;
  - (C) A copyright owner of the work, if known;
  - (D) The types of all phonorecord configurations already made (if any) and expected to be made under the compulsory license (for example: single disk, long-playing disk, cassette, cartridge, reel-to-reel, a digital phonorecord delivery, or a combination of them);
  - (E) The expected date of initial distribution of phonorecords already made (if any) or expected to be made under the compulsory license;
  - (F) The name of the principal recording artist or group actually engaged or expected to be engaged in rendering the performances fixed on phonorecords already made (if any) or expected to be made under the compulsory license;
  - (G) The catalog number or numbers, and label name or names, used or expected to be used on phonorecords already made (if any) or expected to be made under the compulsory license; and
  - (H) In the case of phonorecords already made (if any) under the compulsory license, the date or dates of such manufacture.
- (vi) In the case where the Notice will be filed with the Copyright Office pursuant to paragraph (f)(3) of this section, the Notice shall include an affirmative statement that with respect to the nondramatic musical work named in the Notice of Intention, the registration records or other public records of the Copyright Office have been searched and found not to identify the name and address of the copyright owner of such work.
- (2) A “clear statement” of the information listed in paragraph (d)(1) of this section requires a clearly intelligible, legible, and unambiguous statement in the Notice itself and without incorporation by reference of facts or information contained in other documents or records.
- (3) Where information is required to be given by paragraph (d)(1) of this section “if known” or as “expected,” such information shall be given in good faith and on the basis of the best knowledge, information, and belief of the person signing the Notice. If so given, later developments affecting the accuracy of such information shall not affect the validity of the Notice.
- (e) Signature. The Notice shall be signed by the person or entity intending to obtain the compulsory license or by a duly authorized agent of such person or entity.
- (1) If the person or entity intending to obtain the compulsory license is a corporation, the signature shall be that of a duly authorized officer or agent of the corporation.
  - (2) If the person or entity intending to obtain the compulsory license is a partnership, the signature shall be that of a partner or of a duly authorized agent of the partnership.
  - (3) If the Notice is signed by a duly authorized agent for the person or entity intending to obtain the compulsory license, the Notice shall include an affirmative statement that the agent is

authorized to execute the Notice of Intention on behalf of the person or entity intending to obtain the compulsory license.

(4) If the Notice is served electronically, the person or entity intending to obtain the compulsory license and the copyright owner shall establish a procedure to verify that the Notice is being submitted upon the authority of the person or entity intending to obtain the compulsory license.

(f) Filing and service. (1) If the registration records or other public records of the Copyright Office identify the copyright owner of the nondramatic musical works named in the Notice of Intention and include an address for such owner, the Notice may be served on such owner by mail sent to, or by reputable courier service at, the last address for such owner shown by the records of the Office. It shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

(2) If the Notice is sent by mail or delivered by reputable courier service to the last address for the copyright owner shown by the records of the Copyright Office and the Notice is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office. Notices of Intention submitted for filing under this paragraph (f)(2) shall be submitted to the Licensing Division of the Copyright Office, shall be accompanied by a brief statement that the Notice was sent to the last address for the copyright owner shown by the records of the Copyright Office but was returned, and may be accompanied by appropriate evidence that it was mailed to, or that delivery by reputable courier service was attempted at, that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, or the date delivery by courier service was attempted, if shown by the evidence mentioned above, as the date of filing. An acknowledgment of receipt and filing will be provided to the sender.

(3) If, with respect to the nondramatic musical works named in the Notice of Intention, the registration records or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice may be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in § 201.3(e). A separate fee shall be assessed for each title listed in the Notice. Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when the Notice and fee are both received in the Copyright Office. An acknowledgment of receipt and filing will be provided to the sender.

(4) Alternatively, if the person or entity intending to obtain the compulsory license knows the name and address of the copyright owner of the nondramatic musical work, or the agent of the copyright owner as described in paragraph (a)(4) of this section, the Notice of Intention may be served on the copyright owner or the agent of the copyright owner by sending the Notice by mail or delivering it by reputable courier service to the address of the copyright owner or agent of the copyright owner. For purposes of section 115(b)(1) of title 17 of the United States Code, the Notice will not be considered properly served if the Notice is not sent to the copyright owner or the agent of the copyright owner as described in paragraph (a)(4) of this section, or if the Notice is sent to an incorrect address.

(5) If a Notice of Intention is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If a Notice of Intention is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be

sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the Notice of Intention was served in a timely manner.

(6) If a Notice served upon a copyright owner or an authorized agent of a copyright owner identifies more than 50 works that are embodied or intended to be embodied in phonorecords made under the compulsory license, the copyright owner or the authorized agent may send the person who served the Notice a demand that a list of each of the works so identified be resubmitted in an electronic format, along with a copy of the original Notice. The person who served the Notice must submit such a list, which shall include all of the information required in paragraph (d)(1)(v) of this section, within 30 days after receipt of the demand from the copyright owner or authorized agent. The list shall be submitted on magnetic disk or another medium widely used at the time for electronic storage of data, in the form of a flat file, word processing document or spreadsheet readable with computer software in wide use at such time, with the required information identified and/or delimited so as to be readily discernible. The list may be submitted by means of electronic transmission (such as e-mail) if the demand from the copyright owner or authorized agent states that such submission will be accepted.

(g) Harmless errors. Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of section 115(b)(1) of title 17 of the United States Code, shall not render the Notice invalid.

[69 FR 34582, June 22, 2004, as amended at 73 FR 66181, Nov. 7, 2008]

## **§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.**

(a) Definitions. (1) A Monthly Statement of Account is a statement accompanying monthly royalty payments identified in section 115(c)(5) of title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works, including by means of a digital phonorecord delivery.

(2) An Annual Statement of Account is a statement identified in section 115(c)(5) of title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be filed for every compulsory license to make and distribute phonorecords of nondramatic musical works.

(3) For the purposes of this section, a “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of



time or for a specified number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.

(4) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(5) For the purposes of this section, the service of a Statement of Account on a copyright owner under paragraph (e)(7) or (f)(7) of this section may be accomplished by means of service on either the copyright owner or an agent of the copyright owner with authority to receive Statements of Account on behalf of the copyright owner. In the case where the work has more than one copyright owner, the service of the Statement of Account on one co-owner or upon an agent of one of the co-owners shall be sufficient with respect to all co-owners.

(6) For the purposes of this section, a compulsory licensee is a person or entity exercising the compulsory license to make and distribute phonorecords of nondramatic musical works as provided under section 115 of title 17 of the United States Code.

(7) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord, with the following clarifications:

(i) A digital phonorecord delivery shall be treated as a phonorecord made and distributed on the date the phonorecord is digitally transmitted; and

(ii) A digital phonorecord delivery shall be treated as having been voluntarily distributed and relinquished from possession, and a compulsory licensee shall be treated as having permanently parted with possession of a digital phonorecord delivery, on the date that the phonorecord is digitally transmitted.

(8) Except as provided in paragraph (a)(6) of this section, a phonorecord is considered voluntarily distributed if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord. For this purpose, and subject to the provisions of paragraph (d) of this section, a compulsory licensee shall be considered to have “permanently parted with possession” of a phonorecord made under the license:

(i) In the case of phonorecords relinquished from possession for purposes other than sale, at the time at which the compulsory licensee actually first parts with possession;

(ii) In the case of phonorecords relinquished from possession for purposes of sale without a privilege of returning unsold phonorecords for credit or exchange, at the time at which the compulsory licensee actually first parts with possession;

(iii) In the case of phonorecords relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange:

(A) At the time when revenue from a sale of the phonorecord is “recognized” by the compulsory licensee; or

(B) Nine months from the month in which the compulsory licensee actually first parted with possession, whichever occurs first.

For these purposes, a compulsory licensee shall be considered to “recognize” revenue from the sale of a phonorecord when sales revenue would be recognized in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public

Accountants or the Financial Accounting Standards Board, whichever would cause sales revenue to be recognized first.

(9) To the extent that the terms reserve, credit and return appear in this section, such provisions shall not apply to digital phonorecord deliveries.

(10) A phonorecord reserve comprises the number of phonorecords, if any, that have been relinquished from possession for purposes of sale in a given month accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have not been considered voluntarily distributed during the month in which the compulsory licensee actually first parted with their possession. The initial number of phonorecords comprising a phonorecord reserve shall be determined in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board.

(11) A negative reserve balance comprises the aggregate number of phonorecords, if any, that have been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have been returned to the compulsory licensee, but because all available phonorecord reserves have been eliminated, have not been used to reduce a phonorecord reserve.

(12) An incomplete transmission is any digital transmission of a sound recording which, as determined by means within the sole control of the distributor, does not result in a specifically identifiable reproduction of the entire sound recording by or for any transmission recipient.

(13) A retransmission is a subsequent digital transmission of the same sound recording initially transmitted to an identified recipient for the purpose of completing the delivery of a complete and usable reproduction of that sound recording to that recipient.

(b) Accounting requirements where sales revenue is “recognized”. Where under paragraph (a)(5)(iii)(A) of this section, revenue from the sale of phonorecords is “recognized” during any month after the month in which the compulsory licensee actually first parted with their possession, said compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords for which revenue is being “recognized,” as follows:

(1) If the number of phonorecords for which revenue is being “recognized” is smaller than the number of phonorecords comprising the earliest eligible phonorecord reserve, this phonorecord reserve shall be reduced by the number of phonorecords for which revenue is being “recognized.” Subject to the time limitations of paragraph (a)(7)(iii)(B) of this section, the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(2) If the number of phonorecords for which revenue is being “recognized” is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve and continuing to the next succeeding phonorecord reserves, that are completely offset by phonorecords for which revenue is being “recognized.” Said licensee shall then reduce the next succeeding phonorecord reserve by the number of phonorecords for which revenue is being “recognized” that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of paragraph (a)(7)(iii)(B) of this section, the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(3) If the number of phonorecords for which revenue is being “recognized” equals the number of phonorecords comprising all eligible phonorecord reserves, the person or entity exercising the compulsory license shall eliminate all of the phonorecord reserves.

(c) Accounting requirements for offsetting phonorecord reserves with returned phonorecords. (1) In the case of a phonorecord that has been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, where the phonorecord is returned to the compulsory licensee for credit or exchange before said compulsory licensee is considered to have “permanently parted with possession” of the phonorecord under paragraph (a)(5) of this section, the compulsory licensee may use such phonorecord to reduce a “phonorecord reserve,” as defined in paragraph (a)(6) of this section.

(2) In such cases, the compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords that are returned during the month covered by the Monthly Statement of Account in the following manner:

(i) If the number of phonorecords that are returned during the month covered by the Monthly Statement is smaller than the number comprising the earliest eligible phonorecord reserve, the compulsory licensee shall reduce this phonorecord reserve by the total number of returned phonorecords. Subject to the time limitations of paragraph (B) of § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(ii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve, and continuing to the next succeeding phonorecord reserves, that are completely offset by returned phonorecords. Said licensee shall then reduce the next succeeding phonorecord reserve by the number of returned phonorecords that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of paragraph (B) of § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(iii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is equal to or is greater than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall eliminate all eligible phonorecord reserves. Where said number is greater than the total number of phonorecords comprising all eligible phonorecord reserves, said compulsory licensee shall establish a “negative reserve balance,” as defined in paragraph (a)(10) of this section.

(3) Except where a negative reserve balance exists, a separate and distinct phonorecord reserve shall be established for each month during which the compulsory licensee relinquishes phonorecords from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section. In accordance with paragraph (B) of § 201.19(a)(5)(iii), any phonorecord remaining in a particular phonorecord reserve nine months from the month in which the particular reserve was established shall be considered “voluntarily distributed”; at that point, the particular monthly phonorecord reserve shall lapse and royalties for the phonorecords remaining in it shall be paid as provided in paragraph (e)(4)(ii) of this section.

(4) Where a negative reserve balance exists, the aggregate total of phonorecords comprising it shall be accumulated into a single balance rather than being separated into distinct monthly balances. Following the establishment of a negative reserve balance, any phonorecords relinquished from possession by the compulsory licensee for purposes of sale or otherwise, shall be credited against such negative balance, and the negative reserve balance shall be reduced accordingly. The nine-month limit provided by paragraph (B) of § 201.19(a)(5)(iii) shall have no effect upon a negative reserve balance; where a negative reserve balance exists, relinquishment from possession of a phonorecord by the compulsory licensee at any time shall be used to reduce such balance, and shall not be considered a “voluntary distribution” within the meaning of paragraph (a)(5) of this section.

(5) In no case shall a phonorecord reserve be established while a negative reserve balance is in existence; conversely, in no case shall a negative reserve balance be established before all available phonorecord reserves have been eliminated.

(d) Situations in which a compulsory licensee is barred from maintaining reserves. Notwithstanding any other provisions of this section, in any case where, within three years before the phonorecord was relinquished from possession, the compulsory licensee has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar action, to have failed to pay such royalties, that compulsory licensee shall be considered to have “Permanently parted with possession” of a phonorecord made under the license at the time at which that licensee actually first parts with possession. For these purposes the “compulsory licensee,” as defined in paragraph (a)(5) of this section, shall include:

(1) In the case of any corporation, the corporation or any director, officer, or beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation;

(2) In all other cases, any entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity exercising the compulsory license.

(e) Monthly statements of account —(1) Forms. The Copyright Office does not provide printed forms for the use of persons serving Monthly Statements of Account.

(2) General content. A Monthly Statement of Account shall be clearly and prominently identified as a “Monthly Statement of Account Under Compulsory License for Making and Distributing Phonorecords,” and shall include a clear statement of the following information:

(i) The period (month and year) covered by the Monthly Statement;

(ii) The full legal name of the compulsory licensee, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(iii) The full address, including a specific number and street name or rural route, of the place of business of the compulsory licensee. A post office box or similar designation will not be sufficient for this purpose, except where it is the only address that can be used in that geographic location;

(iv) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the Monthly Statement and the name of the author or authors of such work or works, if known;

(v) For each nondramatic musical work that is owned by the same copyright owner being served with the Monthly Statement and that is embodied in phonorecords covered by the compulsory license, a detailed statement of all of the information called for in paragraph (e)(3) of this section;

(vi) The total royalty payable for the month covered by the Monthly Statement, computed in accordance with the requirements of this section and the formula specified in paragraph (e)(4) of this section, together with a statement of account showing in detail how the royalty was computed; and

(vii) In any case where the compulsory licensee falls within the provisions of paragraph (d) of this section, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that paragraph.

(3) Specific content of monthly statements: Identification and accounting of phonorecords. (i) The information called for by paragraph (e)(2)(v) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information:

(A) The number of phonorecords, including digital phonorecord deliveries, made during the month covered by the Monthly Statement;

(B) The number of phonorecords that, during the month covered by the Monthly Statement and regardless of when made, were either:

Relinquished from possession for purposes other than sale;

Relinquished from possession for purposes of sale without any privilege of returning unsold phonorecords for credit or exchange;

Relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange;

Returned to the compulsory licensee for credit or exchange;

Placed in a phonorecord reserve (except that if a negative reserve balance exists give either the number of phonorecords added to the negative reserve balance, or the number of phonorecords relinquished from possession that have been used to reduce the negative reserve balance);

Never delivered due to a failed transmission; or

Digitally retransmitted in order to complete a digital phonorecord delivery.

(C) The number of phonorecords, regardless of when made, that were relinquished from possession during a month earlier than the month covered by the Monthly Statement but that, during the month covered by the Monthly Statement either have had revenue from their sale “recognized” under paragraph (a)(5)(iii) of this section, or were comprised in a phonorecord reserve that lapsed after nine months under paragraph (B) of § 201.19(a)(5)(iii).

(ii) Each of the items of information called for by paragraph (e)(3)(i) of this section shall also include, and if necessary shall be broken down to identify separately, the following:

(A) The catalog number or numbers and label name or names, used on the phonorecords;

(B) The names of the principal recording artist or group engaged in rendering the performances fixed on the phonorecords;

(C) The playing time on the phonorecords of each nondramatic musical work covered by the statement; and

(D) Each phonorecord configuration involved (for example: single disk, long-playing disk, cartridge, cassette, reel-to-reel, digital phonorecord delivery, or a combination of them).

(E) The date of and a reason for each incomplete transmission.

(4) Royalty payment and accounting. (i) The total royalty called for by paragraph (e)(2)(vi) of this section shall, as specified in section 115(c)(2) of title 17 of the United States Code, be payable for every phonorecord “voluntarily distributed” during the month covered by the Monthly Statement.

(ii) The amount of the royalty payment shall be calculated in accordance with the following formula:

Step 1: Compute the number of phonorecords shipped for sale with a privilege of return. This is the total of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee, accompanied by the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange. This total does not include: (1) Any phonorecords relinquished from possession by the compulsory licensee for purposes of sale without the privilege of return; and (2) any phonorecords relinquished from possession for purposes other than sale.

Step 2: Subtract the number of phonorecords reserved. This involves deducting, from the subtotal arrived at in Step 1, the number of phonorecords that have been placed in the phonorecord reserve for the month covered by the Monthly Statement. The number of phonorecords reserved is determined by multiplying the subtotal from Step 1 by the percentage reserve level established under Generally Accepted Accounting Practices. This step should be skipped by a compulsory licensee barred from maintaining reserves under paragraph (d) of this section.

Step 3: Add the total of all phonorecords that were shipped during the month and were not counted in Step 1. This total is the sum of two figures: (1) The number of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee for purposes of sale, without the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange; and (2) the number of phonorecords relinquished from possession by the compulsory licensee, during the month covered by the Monthly Statement, for purposes other than sale.

Step 4: Make any necessary adjustments for sales revenue “recognized,” lapsed reserves, or reduction of negative reserve balance during the month. If necessary, this step involves adding to or subtracting from the subtotal arrived at in Step 3 on the basis of three possible types of adjustments:

( a ) Sales revenue “recognized.” If, in the month covered by the Monthly Statement, the compulsory licensee “recognized” revenue from the sale of phonorecords that had been relinquished from possession in an earlier month, the number of such phonorecords is added to the Step 3 subtotal;

( b ) Lapsed reserves. If, in the month covered by the Monthly Statement, there are any phonorecords remaining in the phonorecord reserve for the ninth previous month (that is, any phonorecord reserves from the ninth previous month that have not been offset under FOPI, the

first-out-first-in accounting convention, by actual returns during the intervening months), the reserve lapses and the number of phonorecords in it is added to the Step 3 subtotal.

( c ) Reduction of negative reserve balance. If, in the month covered by the Monthly Statement, the aggregate reserve balance for all previous months is a negative amount, the number of phonorecords relinquished from possession by the compulsory licensee during that month and used to reduce the negative reserve balance is subtracted from the Step 3 subtotal.

( d ) Incomplete transmissions. If, in the month covered by the Monthly Statement, there are any digital transmissions of a sound recording which do not result in specifically identifiable reproductions of the entire sound recording by or for any transmission recipient, as determined by means within the sole control of the distributor, the number of such phonorecords is subtracted from the Step 3 subtotal.

( e ) Retransmitted digital phonorecords. If, in the month covered by the Monthly Statement, there are retransmissions of a digital phonorecord to a recipient who did not receive a complete and usable phonorecord during an initial transmission, and such transmissions are made for the sole purpose of delivering a complete and usable reproduction of the initially requested sound recording to that recipient, the number of such retransmitted digital phonorecords is subtracted from the Step 3 subtotal.

Step 5: Multiply by the statutory royalty rate. The total monthly royalty payment is obtained by multiplying the subtotal from Step 3, as adjusted if necessary by Step 4, by the statutory royalty rate of 5.7 cents or 1.1 cents per minute or fraction of playing time, whichever is larger.

(iii) Each step in computing the monthly payment, including the arithmetical calculations involved in each step, shall be set out in detail in the Monthly Statement.

(5) Clear statements. The information required by paragraphs (e) (2) and (3) of this section involves intelligible, legible, and unambiguous statements in the Monthly Statements of Account itself and without incorporation of facts or information contained in other documents or records.

(6) Oath and signature. Each Monthly Statement of Account shall include the handwritten signature of the compulsory licensee. If that compulsory licensee is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that compulsory licensee is a partnership, the signature shall be that of a partner. The signature shall be accompanied by:

(i) The printed or typewritten name of the person signing the Monthly Statement of Account;

(ii) The date of signature;

(iii) If the compulsory licensee is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Monthly Statement of Account;

(iv) A certification of the capacity of the person signing; and

(v) The following statement:

I certify that I have examined this Monthly Statement of Account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(7) Service. (i) Each Monthly Statement of Account shall be served on the copyright owner or the agent with authority to receive Monthly Statements of Account on behalf of the copyright owner to whom or which it is directed, together with the total royalty for the month covered by

the Monthly Statement, by mail or by reputable courier service on or before the 20th day of the immediately succeeding month. However, in the case where the licensee has served its Notice of Intention upon an agent of the copyright owner pursuant to § 201.18, the licensee is not required to serve Monthly Statements of Account or make any royalty payments until the licensee receives from the agent with authority to receive the Notice of Intention notice of the name and address of the copyright owner or its agent upon whom the licensee shall serve Monthly Statements of Account and the monthly royalty fees. Upon receipt of this information, the licensee shall serve Monthly Statements of Account and all royalty fees covering the intervening period upon the person or entity identified by the agent with authority to receive the Notice of Intention by or before the 20th day of the month following receipt of the notification. It shall not be necessary to file a copy of the Monthly Statement in the Copyright Office.

(ii)(A) In any case where a Monthly Statement of Account is sent by mail or reputable courier service and the Monthly Statement of Account is returned to the sender because the copyright owner or agent is no longer located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Monthly Statement of Account, together with any evidence of mailing or attempted delivery by courier service, may be filed in the Licensing Division of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

(B) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under this paragraph (e)(7)(ii).

(C) Neither the filing of a Monthly Statement of Account in the Copyright Office, nor the failure to file such Monthly Statement, shall have effect other than that which may be attributed to it by a court of competent jurisdiction.

(D) No filing fee will be required in the case of Monthly Statements of Account submitted to the Copyright Office under this paragraph (e)(7)(ii). Upon request and payment of the fee specified in § 201.3(e), a Certificate of Filing will be provided to the sender.

(iii) A separate Monthly Statement of Account shall be served for each month during which there is any activity relevant to the payment of royalties under section 115 of Title 17, United States Code, and under this section. The Annual Statement of Account identified in paragraph (f) of this section does not replace any Monthly Statement of Account.

(iv) If a Monthly Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If a Monthly Statement of Account is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the Monthly Statement of Account was served in a timely manner.

(f) Annual statements of account —(1) Forms. The Copyright Office does not provide printed forms for the use of persons serving Annual Statements of Account.

(2) Annual period. Any Annual Statement of Account shall cover the full fiscal year of the compulsory licensee.



(3) General content. An Annual Statement of Account shall be clearly and prominently identified as an “Annual Statement of Account Under Compulsory License for Making and Distributing Phonorecords,” and shall include a clear statement of the following information:

- (i) The fiscal year covered by the Annual Statement;
- (ii) The full legal name of the compulsory licensee, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;
- (iii) If the compulsory licensee is a business organization, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity.
- (iv) The full address, including a specific number and street name or rural route, or the place of business of the compulsory licensee. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location;
- (v) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the Annual Statement and the name of the author or authors of such work or works, if known;
- (vi) The playing time of each nondramatic musical work on such phonorecords;
- (vii) For each nondramatic musical work that is owned by the same copyright owner being served with the Annual Statement and that is embodied in phonorecords covered by the compulsory license, a detailed statement of all of the information called for in paragraph (f)(4) of this section;
- (viii) The total royalty payable for the fiscal year covered by the Annual Statement computed in accordance with the requirements of this section, together with a statement of account showing in detail how the royalty was computed. For these purposes, the applicable royalty as specified in section 115(c)(2) of title 17 of the United States Code, shall be payable for every phonorecord “voluntarily distributed” during the fiscal year covered by the Annual Statement;
- (ix) The total sum paid under Monthly Statements of Account by the compulsory licensee to the copyright owner being served with the Annual Statement during the fiscal year covered by the Annual Statement; and
- (x) In any case where the compulsory license falls within the provisions of paragraph (d) of this section, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that paragraph.

(4) Specific content of annual statements: Identification and accounting of phonorecords. (i) The information called for by paragraph (f)(3)(vii) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information separately stated and identified for each phonorecord configuration (for example, single disk, long playing disk, cartridge, cassette, or reel-to-reel) made:

- (A) The number of phonorecords made through the end of the fiscal year covered by the Annual Statement, including any made during earlier years;
- (B) The number of phonorecords which have never been relinquished from possession of the compulsory licensee through the end of the fiscal year covered by the Annual Statement;

(C) The number of phonorecords involuntarily relinquished from possession (as through fire or theft) of the compulsory licensee during the fiscal year covered by the Annual Statement and any earlier years, together with a description of the facts of such involuntary relinquishment;

(D) The number of phonorecords “voluntarily distributed” by the compulsory licensee during all years before the fiscal year covered by the Annual Statement;

(E) The number of phonorecords relinquished from possession of the compulsory licensee for purposes of sale during the fiscal year covered by the Annual Statement accompanied by a privilege of returning unsold records for credit or exchange, but not “voluntarily distributed” by the end of that year;

(F) The number of phonorecords “voluntarily distributed” by the compulsory licensee during the fiscal year covered by the Annual Statement, together with:

( 1 ) The catalog number or numbers, and label name or names, used on such phonorecords; and

( 2 ) The names of the principal recording artists or groups engaged in rendering the performances fixed on such phonorecords.

(ii) If the information given under paragraphs (f)(4)(i)(A) through (F) of this section does not reconcile, the Annual Statement shall also include a clear and detailed explanation of the difference. For these purposes, the information given under such paragraphs shall be considered not to reconcile if, after the number of phonorecords given under paragraphs (B), (C), (D), and (E) are added together and that sum is deducted from the number of phonorecords given under paragraph (A), the result is different from the amount given under paragraph (F).

(5) Clear statement. The information required by paragraph (f)(3) of this section involves intelligible, legible, and unambiguous statements in the Annual Statement of Account itself and without incorporation by reference of facts or information contained in other documents or records.

(6) Signature and certification. (i) Each Annual Statement of Account shall include the handwritten signature of the compulsory licensee. If that compulsory licensee is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that compulsory licensee is a partnership, the signature shall be that of a partner. The signature shall be accompanied by: (A) The printed or typewritten name of the person signing the Annual Statement of Account; (B) the date of signature; (C) if the compulsory licensee is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Annual Statement of Account; and (D) a certification of the capacity of the person signing.

(ii)(A) Each Annual Statement of Account shall also be certified by a licensed Certified Public Accountant. Such certification shall consist of the following statement:

We have examined the attached “Annual Statement of Account Under Compulsory License For Making and Distributing Phonorecords” for the fiscal year ended (date) of (name of the compulsory licensee) applicable to phonorecords embodying (title or titles of nondramatic musical works embodied in phonorecords made under the compulsory license) made under the provisions of section 115 of title 17 of the United States Code, as amended by Pub. L. 94-553, and applicable regulations of the United States Copyright Office. Our examination was made in accordance with generally accepted auditing standards and accordingly, included tests of the

accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion the Annual Statement of Account referred to above presents fairly the number of phonorecords embodying each of the above-identified nondramatic musical works made under compulsory license and voluntarily distributed by (name of the compulsory licensee) during the fiscal year ending (date), and the amount of royalties applicable thereto under such compulsory license, on a consistent basis and in accordance with the above cited law and applicable regulations published thereunder.

**(City and State of Execution)**

**(Signature of Certified Public Accountant or CPA Firm)**

**Certificate Number**

**Jurisdiction of Certificate**

**(Date of Opinion)**

(B) The certificate shall be signed by an individual, or in the name of a partnership or a professional corporation with two or more shareholders. The certificate number and jurisdiction are not required if the certificate is signed in the name of a partnership or a professional corporation with two or more shareholders.

(7) Service. (i) Each Annual Statement of Account shall be served on the copyright owner or the agent with authority to receive Annual Statements of Account on behalf of the copyright owner to whom or which it is directed by mail or by reputable courier service on or before the 20th day of the third month following the end of the fiscal year covered by the Annual Statement. It shall not be necessary to file a copy of the Annual Statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (e)(7) of this section.

(ii) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (f)(3)(viii) of this section is greater than the amount stated in that Annual Statement under paragraph (f)(3)(ix) of this section, the difference between such amounts shall be delivered to the copyright owner together with the service of the Annual Statement. The delivery of such sum does not require the copyright owner to accept such sum, or to forego any right, relief, or remedy which may be available under law.

(iii)(A) In any case where an Annual Statement of Account is sent by mail or by reputable courier service and is returned to the sender because the copyright owner or agent is not located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Annual Statement of Account, together with any evidence of mailing or attempted delivery by courier service, may be filed in the Licensing Division of the Copyright Office. Any Annual Statement of Account submitted for filing shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

(B) The Copyright Office will not accept any royalty fees submitted with Annual Statements of Account under this paragraph (f)(7)(iii).

(C) Neither the filing of an Annual Statement of Account in the Copyright Office, nor the failure to file such Annual Statement, shall have any effect other than that which may be attributed to it by a court of competent jurisdiction.

(D) No filing fee will be required in the case of Annual Statements of Account submitted to the Copyright Office under this § 201.19(f)(7)(iii). Upon request and payment of the fee specified in § 201.3(e), a Certificate of Filing will be provided to the sender.

(iv) If an Annual Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If an Annual Statement of Account is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the Annual Statement of Account was served in a timely manner.

(g) Documentation. All compulsory licensees shall, for a period of at least three years from the date of service of an Annual Statement of Account, keep and retain in their possession all records and documents necessary and appropriate to support fully the information set forth in such Annual Statement and in Monthly Statements served during the fiscal year covered by such Annual Statement.

(17 U.S.C. 115, 702, 708)

[45 FR 79046, Nov. 28, 1980, as amended at 56 FR 7813, Feb. 26, 1991; 56 FR 59885, Nov. 26, 1991; 63 FR 30635, June 5, 1998; 64 FR 29521, June 1, 1999; 64 FR 36574, 36575, July 7, 1999; 64 FR 41289, July 30, 1999; 66 FR 34373, June 28, 2001; 69 FR 34584, June 22, 2004; 73 FR 66181, Nov. 7, 2008]

## **§ 201.20 Methods of affixation and positions of the copyright notice on various types of works.**

(a) General. (1) This section specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Pub. L. 94-553. A notice considered “acceptable” under this regulation shall be considered to satisfy the requirement of that section that it be “affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright.” As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(2) The provisions of this section are applicable to copies publicly distributed on or after December 1, 1981. This section does not establish any rules concerning the form of the notice or the legal sufficiency of particular notices, except with respect to methods of affixation and positions of notice. The adequacy or legal sufficiency of a copyright notice is determined by the law in effect at the time of first publication of the work.

(b) Definitions. For the purposes of this section:

(1) The terms audiovisual works, collective works, copies, device, fixed, machine, motion picture, pictorial, graphic, and sculptural works, and their variant forms, have the meanings given to them in section 101 of title 17.

(2) Title 17 means title 17 of the United States Code, as amended by Pub. L. 94-553.

(3) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a "page" is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms "page" and "leaf" mean the same.

(4) A work is published in book form if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this section, a work need not consist of textual matter in order to be considered published in "book form."

(5) A title page is a page, or two consecutive pages facing each other, appearing at or near the front of the copies of a work published in book form, on which the complete title of the work is prominently stated and on which the names of the author or authors, the name of the publisher, the place of publication, or some combination of them, are given.

(6) The meaning of the terms front, back, first, last, and following, when used in connection with works published in book form, will vary in relation to the physical form of the copies, depending upon the particular language in which the work is written.

(7) In the case of a work published in book form with a hard or soft cover, the front page and back page of the copies are the outsides of the front and back covers; where there is no cover, the "front page," and "back page" are the pages visible at the front and back of the copies before they are opened.

(8) A masthead is a body of information appearing in approximately the same location in most issues of a newspaper, magazine, journal, review, or other periodical or serial, typically containing the title of the periodical or serial, information about the staff, periodicity of issues, operation, and subscription and editorial policies, of the publication.

(9) A single-leaf work is a work published in copies consisting of a single leaf, including copies on which the work is printed or otherwise reproduced on either one side or on both sides of the leaf, and also folders which, without cutting or tearing the copies, can be opened out to form a single leaf. For the purpose of this section, a work need not consist of textual matter in order to be considered a "single-leaf work."

(c) Manner of affixation and position generally. (1) In all cases dealt with in this section, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination.

(2) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this section but a person looking in one of those locations would be reasonably certain to find a notice in another somewhat different location, that notice will be acceptable under this section.

(d) Works published in book form. In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable:

(1) The title page, if any;

(2) The page immediately following the title page, if any;

- (3) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;
- (4) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;
- (5) The first page of the main body of the work;
- (6) The last page of the main body of the work;
- (7) Any page between the front page and the first page of the main body of the work, if:
  - (i) There are no more than ten pages between the front page and the first page of the main body of the work; and
  - (ii) The notice is reproduced prominently and is set apart from other matter on the page where it appears;
- (8) Any page between the last page of the main body of the work and back page, if:
  - (i) There are no more than ten pages between the last page of the main body of the work and the back page; and
  - (ii) The notice is reproduced prominently and is set apart from the other matter on the page where it appears.
- (9) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (d) (1) through (8) of this section, a notice is acceptable if it is located:
  - (i) As a part of, or adjacent to, the masthead;
  - (ii) On the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page; or
  - (iii) Adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or serial and any combination of the volume and issue number and date of the issue.
- (10) In the case of a musical work, in addition to any of the locations listed in paragraphs (d) (1) through (9) of this section, a notice is acceptable if it is located on the first page of music.
- (e) Single-leaf works. In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.
- (f) Contributions to collective works. For a separate contribution to a collective work to be considered to “bear its own notice of copyright,” as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:
  - (1) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears:
    - (i) Under the title of the contribution on that page;
    - (ii) Adjacent to the contribution; or
    - (iii) On the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

(2) Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears:

(i) Under a title appearing at or near the beginning of the contribution;

(ii) On the first page of the main body of the contribution;

(iii) Immediately following the end of the contribution; or

(iv) On any of the pages where the contribution appears, if:

(A) The contribution is reproduced on no more than twenty pages of the collective work;

(B) The notice is reproduced prominently and is set apart from other matter on the page where it appears; and

(C) Through format, wording, or both, the application of the notice to the particular contribution is made clear;

(3) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (f) (1) and (2) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(4) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to “bear its own notice” if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution:

(i) On the page bearing the copyright notice for the collective work as a whole, if any; or

(ii) In a clearly identified and readily-accessible table of contents or listing of acknowledgements appearing near the front or back of the collective work as a whole.

(g) Works reproduced in machine-readable copies. For works reproduced in machine-readable copies (such as magnetic tapes or disks, punched cards, or the like, from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, 1 each of the following constitute examples of acceptable methods of affixation and position of notice:

1 Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform) and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

(1) A notice embodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(2) A notice that is displayed at the user's terminal at sign on;

(3) A notice that is continuously on terminal display; or

(4) A legible notice reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(h) Motion pictures and other audiovisual works. (1) The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or

electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located:

- (i) With or near the title;
- (ii) With the cast, credits, and similar information;
- (iii) At or immediately following the beginning of the work; or
- (iv) At or immediately preceding the end of the work.

(2) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (h)(1) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

(3) In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in addition to the locations specified in paragraph (h)(1) of this section, on the housing or container, if it is a permanent receptacle for the work.

(i) Pictorial, graphic, and sculptural works. The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

(1) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, of the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(2) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(3) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce.

(4) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied:

- (i) To the reproduction itself;
- (ii) To the margin, selvage, or reverse side of the material at frequent and regular intervals; or
- (iii) If the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.



(5) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

(17 U.S.C. 401, 702)

[46 FR 58312, Dec. 1, 1981, as amended at 66 FR 34373, June 28, 2001]

## **§ 201.21 [Reserved]**

## **§ 201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.**

(a) Definitions. (1) An Advance Notice of Potential Infringement is a notice which, if served in accordance with section 411(b) of title 17 of the United States Code, and in accordance with the provisions of this section, enables a copyright owner to institute an action for copyright infringement either before or after the first fixation of a work consisting of sounds, images, or both that is first fixed simultaneously with its transmission, and to enjoy the full remedies of said title 17 for copyright infringement, provided registration for the work is made within three months after its first transmission.

(2) For purposes of this section, the copyright owner of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, is the person or entity that will be considered the author of the work upon its fixation (including, in the case of a work made for hire, the employer or other person or entity for whom the work was prepared), or a person or organization that has obtained ownership of an exclusive right, initially owned by the person or entity that will be considered the author of the work upon its fixation.

(3) A transmission program is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

(b) Form. The Copyright Office does not provide printed forms for the use of persons serving Advance Notices of Potential Infringement.

(c) Contents. (1) An Advance Notice of Potential Infringement shall be clearly and prominently captioned “ADVANCE NOTICE OF POTENTIAL INFRINGEMENT” and must clearly state that the copyright owner objects to the relevant activities of the person responsible for the potential infringement, and must include all of the following:

(i) Reference to title 17 U.S.C. section 411(b) as the statutory authority on which the Advance Notice of Potential Infringement is based;

(ii) The date, specific time, and expected duration of the intended first transmission of the work or works contained in the specific transmission program;

(iii) The source of the intended first transmission of the work or works;

(iv) Clear identification, by title, of the work or works. A single Advance Notice of Potential Infringement may cover all of the works of the copyright owner embodied in a specific transmission program. If any work is untitled, the Advance Notice of Potential Infringement shall include a detailed description of that work;

(v) The name of at least one person or entity that will be considered the author of the work upon its fixation;

(vi) The identity of the copyright owner, as defined in paragraph (a)(2) of this section. If the copyright owner is not the person or entity that will be considered the author of the work upon its fixation, the Advance Notice of Potential Infringement also shall include a brief, general statement summarizing the means by which the copyright owner obtained ownership of the copyright and the particular rights that are owned; and

(vii) A description of the relevant activities of the person responsible for the potential infringement which would, if carried out, result in an infringement of the copyright.

(2) An Advance Notice of Potential Infringement must also include clear and prominent statements:

(i) Explaining that the relevant activities may, if carried out, subject the person responsible to liability for copyright infringement; and

(ii) Declaring that the copyright owner intends to secure copyright in the work upon its fixation.

(d) Signature and identification. (1) An Advance Notice of Potential Infringement shall be in writing and signed by the copyright owner, or such owner's duly authorized agent.

(2) The signature of the owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(3) If an Advance Notice of Potential Infringement is initially served in the form of a telegram or similar communication, as provided by paragraph (e)(2)(iii) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) Service. (1) An Advance Notice of Potential Infringement shall be served on the person responsible for the potential infringement not less than 48 hours before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).

(2) Service of the Advance Notice may be effected by any of the following methods:

(i) Personal service;

(ii) First-class mail; or

(iii) Telegram, cablegram, or similar form of communication, if:

(A) The Advance Notice meets all of the other conditions provided by this section; and

(B) Before the first fixation and simultaneous transmission take place, the person responsible for the potential infringement receives written confirmation of the Advance Notice, bearing the actual handwritten signature of the copyright owner or duly authorized agent.

(3) The date of service is the date the Advance Notice of Potential Infringement is received by the person responsible for the potential infringement or by any agent or employee of that person.

(17 U.S.C. 411, 702)

[46 FR 28849, May 29, 1981, as amended at 63 FR 66042, Dec. 1, 1998; 66 FR 34373, June 28, 2001]

## **§ 201.23 Transfer of unpublished copyright deposits to the Library of Congress.**

(a) General. This section prescribes rules governing the transfer of unpublished copyright deposits in the custody of the Copyright Office to the Library of Congress. The copyright deposits may consist of copies, phonorecords, or identifying material deposited in connection with registration of claims to copyright under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553, 90 Stat. 2541, effective January 1, 1978. These rules establish the conditions under which the Library of Congress is entitled to select deposits of unpublished works for its collections or for permanent transfer to the National Archives of the United States or to a Federal records center in accordance with section 704(b) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(b) Selection by the Library of Congress. The Library of Congress may select any deposits of unpublished works for the purposes stated in paragraph (a) of this section at the time of registration or at any time thereafter; Provided, That:

(1) A facsimile reproduction of the entire copyrightable content of the deposit shall be made a part of the Copyright Office records before transfer to the Library of Congress as provided by section 704(c) of title 17 of the United States Code, as amended by Pub. L. 94-553, unless, within the discretion of the Register of Copyrights, it is considered impractical or too expensive to make the reproduction;

(2) All unpublished copyright deposits retained by the Library of Congress in its collections shall be maintained under the control of the Library of Congress with appropriate safeguards against unauthorized copying or other unauthorized use of the deposits which would be contrary to the rights of the copyright owner in the work under title 17 of the United States Code, as amended by Pub. L. 94-553; and

(3) At the time selection is made a request for full term retention of the deposit under the control of the Copyright Office has not been granted by the Register of Copyrights, in accordance with section 704(e) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(17 U.S.C. 702, 704)

[45 FR 41414, June 19, 1980]

## **§ 201.24 Warning of copyright for software lending by nonprofit libraries.**

(a) Definition . A Warning of Copyright for Software Rental is a notice under paragraph (b)(2)(A) of section 109 of the Copyright Act, title 17 of the United States Code, as amended by the Computer Software Rental Amendments Act of 1990, Public Law 101-650. As required by that paragraph, the “Warning of Copyright for Software Rental” shall be affixed to the packaging that contains the computer program which is lent by a nonprofit library for nonprofit purposes.

(b) Contents. A Warning of Copyright for Software Rental shall consist of a verbatim reproduction of the following notice, printed in such size and form and affixed in such manner as to comply with paragraph (c) of this section.

## **Notice: Warning of Copyright Restrictions**

The copyright law of the United States (title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgement, fulfillment of the request would lead to violation of the copyright law.

(c) Form and manner of use. A Warning of Copyright for Software Rental shall be affixed to the packaging that contains the copy of the computer program, which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program.

[56 FR 7812, Feb. 26, 1991, as amended at 66 FR 34373, June 28, 2001]

## **§ 201.25 Visual Arts Registry.**

(a) General. This section prescribes the procedures relating to the submission of Visual Arts Registry Statements by visual artists and owners of buildings, or their duly authorized representatives, for recordation in the Copyright Office under section 113(d)(3) of title 17 of the United States Code, as amended by Public Law 101-650, effective June 1, 1991. Statements recorded in the Copyright Office under this regulation will establish a public record of information relevant to an artist's integrity right to prevent destruction or injury to works of visual art incorporated in or made part of a building.

(b) Forms. The Copyright Office does not provide forms for the use of persons recording statements regarding works of visual art that have been incorporated in or made part of a building.

(c) Recordable statements —(1) General. Any statement designated as a “Visual Arts Regulatory Statement” and which pertains to a work of visual art that has been incorporated in or made part of a building may be recorded in the Copyright Office provided the statement is accompanied by the fee for recordation of documents specified in section 708(a)(4) of title 17 of the United States Code. Upon their submission, the statements and an accompanying documentation or photographs become the property of the United States Government and will not be returned. Photocopies are acceptable if they are clear and legible. Information contained in the Visual Arts Registry Statement should be as complete as possible since the information may affect the enforceability of valuable rights under the copyright law. Visual Arts Registry Statements which are illegible or fall outside of the scope of section 113(d)(3) of title 17 may be refused recordation by the Copyright Office.

(2) Statements by artists. Statements by artists regarding a work of visual art incorporated or made part of a building should be filed in a document containing the head: “Registry of Visual

Art Incorporated in a Building—Artist's Statement.” The statement should contain the following information:

(i) Identification of the artist, including name, current address, age, and telephone number, if publicly listed.

(ii) Identification of the work or works, including the title, dimensions, and physical description of the work and the copyright registration number, if known. Additionally, it is recommended that one or more 8×10 photographs of the work on good quality photographic paper be included in the submission; the images should be clear and in focus.

(iii) Identification of the building, including its name and address. This identification may additionally include 8×10 photographs of the building and the location of the artist's work in the building.

(iv) Identification of the owner of the building, if known.

(3) Statements by the owner of the building. Statements of owners of a building which incorporates a work of visual art should be filed in a document containing the heading: “Registry of Visual Art Incorporated in a Building—Building Owner's Statement.” The statement should contain the following information:

(i) Identification of the ownership of the building, the name of a person who represents the owner, and a telephone number, if publicly listed.

(ii) Identification of the building, including the building's name and address. This identification may additionally include 8×10 photographs of the building and of the works of visual art which are incorporated in the building.

(iii) Identification of the work or works of visual art incorporated in the building, including the works' title(s), if known, and the dimensions and physical description of the work(s). This identification may include one or more 8×10 photographs of the work(s) on high quality photographic paper; the images should be clear and in focus.

(iv) Identification of the artist(s) who have works incorporated in the building, including the current address of each artist, if known.

(v) Photocopy of contracts, if any, between the artist and owners of the building regarding the rights of attribution and integrity.

(vi) Statement as to the measures taken by the owner to notify the artist(s) of the removal or pending removal of the work of visual art, and photocopies of any accompanying documents.

(4) Updating statements. Either the artist or owner of the building or both may record statements updating previously recorded information by submitting an updated statement and paying the recording fee specified in paragraph (d) of this section. Such statements should repeat the information disclosed in the previous filing as regarding the name of the artist(s), the name of the work(s) of visual art, the name and address of the building, and the name of the owner(s) of the building. The remaining portion of the statement should correct or supplement the information disclosed in the previously recorded statement.

(d) Fee. The fee for recording a Visual Arts Registry Statement, a Building Owner's Statement, or an updating statement is the recordation fee for a document, as prescribed in § 201.3(c).

(e) Date of recordation. The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. Any documentation or photographs accompanying any submission will be retained and filed by the Copyright Office. They may also be transferred to the Library of Congress, or destroyed after preparing suitable copies, in accordance with usual procedures.

(f) Effect of recordation. The Copyright Office will record statements in the Visual Arts Registry without examination or verification of the accuracy or completeness of the statement, if the statement is designated as a “Visual Arts Registry Statement” and pertains to a work of visual art incorporated in or made part of a building. Recordation of the statement and payment of the recording fee shall establish only the fact of recordation in the official record. Acceptance for recordation shall not be considered a determination that the statement is accurate, complete, and otherwise in compliance with section 113(d), title 17, U.S. Code. The accuracy and completeness of the statement is the responsibility of the artist or building owner who submits it for recordation. Artists and building owners are encouraged to submit accurate and complete statements. Omission of any information, however, shall not itself invalidate the recordation, unless a court of competent jurisdiction finds the statement is materially deficient and fails to meet the minimum requirements of section 113(d) of title 17, U.S. Code.

[56 FR 38341, Aug. 13, 1991, as amended at 64 FR 29522, June 1, 1999; 65 FR 39819, June 28, 2000]

## **§ 201.26 Recordation of documents pertaining to computer shareware and donation of public domain computer software.**

(a) General. This section prescribes the procedures for submission of legal documents pertaining to computer shareware and the deposit of public domain computer software under section 805 of Public Law 101-650, 104 Stat. 5089 (1990). Documents recorded in the Copyright Office under this regulation will be included in the Computer Shareware Registry. Recordation in this Registry will establish a public record of licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware. Documents transferring the ownership of some or all rights under the copyright law of computer shareware and security interests in such software should be recorded under 17 U.S.C. 205, as implemented by § 201.4.

(b) Definitions —(1) The term computer shareware is accorded its customary meaning within the software industry. In general, shareware is copyrighted software which is distributed for the purposes of testing and review, subject to the condition that payment to the copyright owner is required after a person who has secured a copy decides to use the software.

(2) A document designated as pertaining to computer shareware means licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware.

(3) Public domain computer software means software which has been publicly distributed with an explicit disclaimer of copyright protection by the copyright owner.

(c) Forms. The Copyright Office does not provide forms for the use of persons recording documents designated as pertaining to computer shareware or for the deposit of public domain computer software.

(d) Recordable Documents —(1) Any document clearly designated as a “Document Pertaining to Computer Shareware” and which governs the legal relationship between owners of computer shareware and persons associated with the dissemination or other use of computer shareware may be recorded in the Computer Shareware Registry.

(2) Submitted documents may be a duplicate original, a legible photocopy, or other legible facsimile reproduction of the document, and must be complete on its face.

(3) Submitted documents will not be returned, and the Copyright Office requests that if the document is considered valuable, that only copies of that document be submitted for recordation.

(4) The Copyright Office encourages the submission of a machine-readable copy of the document in the form of an IBM-PC compatible disk, in addition to a copy of the document itself.

(e) Fee. The fee for recording a document pertaining to computer shareware is the recordation fee for a document, as prescribed in § 201.3(c).

(f) Date of recordation. The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. The submission will be retained and filed by the Copyright Office, and may be destroyed at a later date after preparing suitable copies, in accordance with usual procedures.

(g) Donation of public domain computer software. (1) Any person may donate a copy of public domain computer software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Decision as to whether any public domain computer software is suitable for accession to the collections rests solely with the Library of Congress. Materials not selected will be disposed of in accordance with usual procedures, including transfer to other libraries, sale, or destruction. Donation of public domain software may be made regardless of whether a document has been recorded pertaining to the software.

(2) In order to donate public domain software, the following conditions must be met:

(i) The copy of the public domain software must contain an explicit disclaimer of copyright protection from the copyright owner.

(ii) The submission should contain documentation regarding the software. If the documentation is in machine-readable form, a print-out of the documentation should be included in the donation.

(iii) If the public domain software is marketed in a box or other packaging, the entire work as distributed, including the packaging, should be deposited.

(iv) If the public domain software is copy protected, two copies of the software must be submitted.

(3) Donations of public domain software with an accompanying letter of explanation must be sent to the following address: Gift Section, Exchange & Gift Division, Library of Congress, Washington, DC 20540-4260.

[58 FR 29107, May 19, 1993, as amended at 60 FR 34168, June 30, 1995; 64 FR 29522, June 1, 1999; 65 FR 39819, June 28, 2000]

## **§ 201.27 Initial notice of distribution of digital audio recording devices or media.**

- (a) General. This section prescribes rules pertaining to the filing of an Initial Notice of Distribution in the Copyright Office as required by section 1003(b) of the Audio Home Recording Act of 1992, Public Law 102-563, title 17 of the United States Code, to obtain a statutory license to import and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium in the United States.
- (b) Definitions —(1) An Initial Notice of Distribution of Digital Audio Recording Devices or Media or Initial Notice is a notice under section 1003(b) of the Audio Home Recording Act of 1992, Public Law 102-563, title 17 of the United States Code, which is required by that section to be filed in the Copyright Office by an importer or manufacturer of a digital audio recording device or digital audio recording medium who has not previously filed notice of the importation or manufacture for distribution of such device or medium in the United States.
- (2) The product category of a device or medium is a general class of products made up of functionally equivalent digital audio recording devices or media with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units (“boomboxes”); portable personal recorders; stand-alone home recorders (“tape decks”); home combination systems (“rack systems”); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media such as 2 1/2 ,” 3” and 5” discs.
- (3) The technology of a device or medium is a product type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassette, (DCC), or recordable compact discs, including minidisks (MD).
- (4) The terms digital audio recording device, digital audio recording medium, distribute, manufacture, and transfer price, have the meanings of the same terms as they are used in section 1001 of the Copyright Act, title 17 of the United States Code, as amended by Public Law 102-563.
- (c) Forms. An Initial Notice form may be obtained from the Copyright Office free of charge, by contacting the Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557-6400.
- (d) Filing Deadline. Initial Notices shall be filed in the Copyright Office no later than 45 days after the commencement of the first distribution of digital audio recording devices or digital audio recording media in the United States, on or after October 28, 1992. A manufacturer or importer shall file an Initial Notice within 45 days of the first distribution for each new product category and each new technology that the manufacturer or importer has not reported in a previous Initial Notice.
- (e) Content of Initial Notices. An Initial Notice of Distribution of Digital Audio Recording Devices or Media shall be identified as such by prominent caption or heading, and shall include the following:



(1) The designation “Importer” or “Manufacturer,” or both, whichever is applicable, followed by the full legal name of the importer or manufacturer of the digital audio recording device or medium, or if the party named is a partnership, the name of the partnership followed by the name of at least one individual partner;

(2) Any trade or business name or names, trademarks, or other indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such digital audio recording device or medium in the United States;

(3) The full United States mailing address of the importer or manufacturer, and the full business address, if different;

(4) The product category and technology of the devices or media imported or manufactured;

(5) The first date (day, month, and year) that distribution commenced, or is to commence;

(6) The signature of an appropriate officer, partner, or agent of the importer or manufacturer, as specified by the Initial Notice form; and

(7) Other information relevant to the importation or manufacture for distribution of digital audio recording devices or media as prescribed on the Initial Notice form provided by the Copyright Office.

(f) Amendments. (1) The Copyright Office will record amendments to Initial Notices submitted to correct an error or omission in the information given in an earlier Initial Notice. An amendment is not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice.

(2) An amendment shall:

(i) Be clearly and prominently identified as an “Amendment to an Initial Notice of Distribution of Digital Audio Recording Devices or Media;”

(ii) Identify the specific Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office;

(iii) Clearly specify the nature of the amendment to be made; and

(iv) Be signed and dated in accordance with this section.

(3) The recordation of an amendment under this paragraph shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(g) Recordation. (1) The Copyright Office will record the Initial Notices and amendments submitted in accordance with this section by placing them in the appropriate public files of the Office. The Copyright Office will advise manufacturers and importers of errors or omissions appearing on the face of documents submitted to it, and will require that any such obvious errors or omissions be corrected before the documents will be recorded. However, recordation by the Copyright Office shall establish only the fact and date thereof; such recordation shall in no case be considered a determination that the document was, in fact, properly prepared or that all of the regulatory requirements to satisfy section 1003 of title 17 have been met.

(2) No fee shall be required for the recording of Initial Notices. The fee for filing an Amendment to an Initial Notice of Distribution of Digital Audio Recording Devices or Media is prescribed in § 201.3(e).

[57 FR 55465, Nov. 25, 1992, as amended at 64 FR 36575, July 7, 1999; 72 FR 33692, June 19, 2007]

## **§ 201.28 Statements of Account for digital audio recording devices or media.**

(a) General. This section prescribes rules pertaining to the filing of Statements of Account and royalty fees in the Copyright Office as required by 17 U.S.C. 1003(c) and 1004, in order to import and distribute, or manufacture and distribute, in the United States any digital audio recording device or digital audio recording medium.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Annual statement of account is the statement required under 17 U.S.C. 1003, to be filed no later than two months after the close of the accounting period covered by the annual statement.

(2) Device and medium have the same meaning as digital audio recording device and digital audio recording medium, respectively, have in 17 U.S.C. 1001.

(3) Digital audio recording product means digital audio recording devices and digital audio recording media.

(4) Generally accepted auditing standards (GAAS), means the auditing standards promulgated by the American Institute of Certified Public Accountants.

(5) Manufacturing or importing party refers to any person or entity that manufactures and distributes, and/or imports and distributes, any digital audio recording device or digital audio recording medium in the United States, and is required under 17 U.S.C. 1003 to file with the Copyright Office quarterly and annual Statements of Account.

(6) Product category of a device or medium is a general class of products made up of functionally equivalent digital audio recording products with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units ("boomboxes"); portable personal recorders; stand-alone home recorders ("tape decks"); home combination systems ("rack systems"); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media, such as 2 1/2 inch, 3 inch, or 5 inch discs.

(7) Primary auditor is the certified public accountant retained by the manufacturing or importing party to audit the amounts reported in the annual Statement of Account submitted to the Copyright Office. The primary auditor may be the certified public accountant engaged by the manufacturing or importing party to perform the annual audit of the party's financial statement.

(8) Quarterly statement of account is the statement accompanying royalty payments required under 17 U.S.C. 1003, to be filed for each of the first three quarters of the accounting year, and no later than 45 days after the close of the quarterly period covered by the statement.

(9) Technology of a device or medium is a digital audio recording product-type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassettes (DCC), or recordable compact discs, including minidisks (MD).

(10) Distribute, manufacture, transfer price, and serial copying have the meanings set forth in 17 U.S.C. 1001.

(c) Accounting periods and filing deadlines —(1) Election of filing basis. Statements of Account may be filed on either a calendar or fiscal year basis at the election of the manufacturing party. The election of a calendar or fiscal year basis must be made when the manufacturing or importing party files its first quarterly Statement of Account by appropriate designation on the Form DART/Q submitted. Thereafter the specific calendar or fiscal-year accounting period must be designated on each quarterly Statement of Account. The filing basis may be changed at any time upon notification in writing to the Register of Copyrights, accompanied by a statement of reasons as to why the change is to be made and a statement that such change will not affect the aggregate royalties due under the earlier basis. The notification of change in filing basis must be made at least two months before the date the next quarterly Statement of Account is due to be filed.

(2) Quarterly filings. Quarterly Statements of Account shall be filed on Form DART/Q and shall cover a three-month period corresponding to the calendar or fiscal year of the filing party. A quarterly statement shall be filed no later than 45 days after the close of the period it covers.

(3) Annual filings. Annual Statements of Account shall be filed on Form DART/A and shall cover both the fourth quarter of an accounting year and the aggregate of the entire year corresponding to the calendar or fiscal accounting year elected. An annual statement shall be filed no later than two months after the close of the period it covers. As a transitional measure, however, the first annual Statement of Account filed after October 28, 1992, is not due until March 1, 1994, or two months after the end of the calendar or fiscal year in which the manufacturing or importing party first filed a quarterly Statement of Account, whichever is later. The first annual Statement of Account shall cover the entire period from October 28, 1992, to the end of the full accounting year. The appropriate royalty payment, calculated according to the instructions contained in Form DART/A, shall accompany the annual Statement of Account covering royalties due for the filing year: that is, royalties for the fourth quarter and any additional royalties that are due because of adjustments in the aggregate amounts of devices or media distributed.

(4) Early or late filings. Statements of Account and royalty fees received before the end of the particular accounting period covered by the statement will not be processed by the Office. The statement must be filed after the close of the relevant accounting period. Statements of Account and royalty fees received after the 45-day deadline for quarterly statements or the two-month deadline for annual statements will be accepted for whatever legal effect they may have and will be assessed the appropriate interest charge for the late filing.

(d) Forms. (1) Each quarterly or annual Statement of Account shall be submitted on the appropriate form prescribed by the Copyright Office. Computation of the royalty fee shall be in accordance with the procedures set forth in the forms and this section. Statement of Account forms are available from the Licensing Division, Library of Congress. Forms and other information may be requested from the Licensing Division by facsimile transmission (FAX), but copies of Statement of Account forms transmitted to the Office by FAX will not be accepted.

(2) Forms prescribed by the Copyright Office are designated Quarterly Statement of Account for Digital Audio Recording Products (Form DART/Q) and Annual Statement of Account for Digital Audio Recording Products (Form DART/A).

(e) Contents of quarterly Statements of Account —(1) Quarterly period and filing. Any quarterly Statement of Account shall cover the full quarter of the calendar or fiscal accounting year for the particular quarter for which it is filed. A separate quarterly statement shall be filed for each quarter of the first three quarters of the accounting year during which there is any activity relevant to the payment of royalties under 17 U.S.C. 1004. The annual Statement of Account identified in paragraph (f) of this section incorporates the fourth quarter of the accounting year.

(2) General content. Each quarterly Statement of Account shall be filed on Form DART/Q, the “Quarterly Statement of Account for Digital Audio Recording Products,” and shall include a clear statement of the following information:

(i) A designation of the calendar or fiscal year of the annual reporting period;

(ii) A designation of the period, including the beginning and ending day, month, and year of the period covered by the quarter;

(iii) The full legal name of the manufacturing and/or importing party, together with any “doing-business-as” names used by such person or entity for the purpose of conducting the business of manufacturing, importing, or distributing digital audio recording products;

(iv) The full mailing address of the manufacturing or importing party, including a specific number and street name, or rural route and box number, of the place of business of the person or entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location;

(v) A designation of the manufacturing or importing party status, i.e. , “Manufacturer,” “Importer,” or “Manufacturer and Importer;”

(vi) The designation “Product Categories” together with the product categories of the digital audio recording products manufactured or imported and distributed during the quarter covered by the statement;

(vii) The designation “Technologies” together with the technologies of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(viii) The designation “Series or Model Number” followed by the model or series numbers of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(ix) The “fee code” associated with the product;

(x) The “source code” for the product category;

(xi) The “transfer price” of the product;

(xii) The “number of units distributed” for each product;

(xiii) The “minimum fee per unit” for each product;

(xiv) The statutory royalty “rate” for digital audio recording devices or media;

(xv) The “rate fee” for each product;

(xvi) The appropriate “maximum fee per unit” for each product;

(xvii) The “maximum fee” for each product; and

(xviii) A computation of the total royalty payable for the quarter covered by the statement. Filing parties may not round off the figures they list in Space C, the computation section of the form, except for the figure representing the total royalty fee due; in that case, numbers ending in 50 to 99 cents may be rounded up to the next dollar, and numbers ending in one to 49 cents may be rounded down to the next dollar;

(3) Royalty payments and accounting. (i) The royalty specified in 17 U.S.C. 1004 shall accompany the quarterly and annual Statements of Account. No royalty is payable for redistribution of the same product item unless a credit has been taken for such items. Where royalties are payable for the period covered by the statement, the Statement of Account shall contain the following information for each unique combination of product category, technology, series or model number, fee code, source code, and transfer price:

(A) The total number of digital audio recording media distributed, multiplied by the statutory royalty rate of three percent (3%) of the transfer price;

(B) The total number of digital audio recording devices distributed for which the statutory royalty rate of two percent (2%) of the transfer price is payable, multiplied by such percentage rate of the transfer price;

(C) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to eight dollars (\$8.00), multiplied by such eight dollar amount;

(D) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to twelve dollars (\$12.00), multiplied by such twelve dollar amount; and

(E) The total number of digital audio recording devices distributed for which the statutory minimum royalty is limited to one dollar (\$1.00), multiplied by such one dollar amount.

(ii) The amount of the royalty payment shall be calculated in accordance with the instructions specified in the quarterly Statement of Account form. Payment shall be made as specified in § 201.28(h).

(4) Reduction of royalty fee. (i) Section 1004(a)(2)(A) of title 17 of the United States Code, provides an instance in which royalty payments may be reduced if the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

(ii) Notice of this provision together with directions for possible application to a product is contained in the DART/Q Form.

(5) Contact party. Each Statement of Account shall include the name, address, and telephone and facsimile (FAX) numbers of an individual whom the Copyright Office can write or call about the Statement of Account.

(6) Credits for returned or exported products. When digital audio recording products first distributed in the United States for ultimate transfer to United States consumers are returned to the manufacturer or importer as unsold or defective merchandise, or are exported, the manufacturing or importing party may take a credit to be deducted from the royalties payable for the period when the products were returned or exported. The credit may be taken only for returns

or exports made within two years following the date royalties were paid for the products. This credit must be reflected in the manufacturing or importing party's quarterly or annual Statement of Account. If the manufacturer or importer later redistributes in the United States any products for which a credit has been taken, these products must be listed on the Statement of Account, and a new computation of the royalty fee must be made based on the transfer price of the products at the time of the new distribution.

(7) Oath and signature. Each Statement of Account shall include the handwritten signature of an authorized officer, principal, or agent of the filing party. The signature shall be accompanied by:

- (i) The printed or typewritten name of the person signing the quarterly Statement of Account;
- (ii) The date the document is signed;
- (iii) The following certification:

I, the undersigned, hereby certify that I am an authorized officer, principal, or agent of the “manufacturing or importing party” identified in Space B.

Penalties for fraud and false statements are provided under 18 U.S.C. 1001 et. seq.

(f) Contents of annual Statements of Account —(1) General contents. Each annual Statement of Account shall be filed on form DART/A, “Annual Statement of Account for Digital Audio Recording Products.” It must be filed by any importer or manufacturer that distributed in the United States, during a given calendar or fiscal year, any digital audio recording device or digital audio recording medium. The annual statement shall cover the aggregate of the distribution of devices and media for the entire year corresponding to the calendar or fiscal year elected. The annual Statement of Account shall contain the information, oath, and certification prescribed in paragraphs (e)(2)(i) through (e)(7)(iii) of this section, and shall cover the entire accounting year, including the fourth quarter distribution, and shall also provide for the reconciliation of the aggregated accounting of digital audio recording devices and media for the reported accounting year.

(2) Reconciliation. Any royalty payment due under sections 1003 and 1004 of title 17 that was not previously paid with the filing party's first three quarterly Statements of Account, shall be reconciled in the annual statement. Reconciliation in the annual Statement of Account provides for adjustments for reductions, refunds, underpayments, overpayments, credits, and royalty payments paid in Quarters 1, 2, and 3, and shall be computed in accordance with the instructions included in the annual Statement of Account. Errors that require reconciliation shall be corrected immediately upon discovery.

(3) Accountant's opinion. Each annual Statement of Account or any amended annual Statement of Account shall be audited by the primary auditor as defined in paragraph (b)(7) of this section. An amendment may be submitted to the Office either as a result of responses to questions raised by a Licensing Division examiner or on the initiative of the manufacturing or importing party to correct an error in the original Statement of Account.

(i) The audit shall be performed in accordance with generally accepted auditing standards (GAAS). The audit may be performed in conjunction with an annual audit of the manufacturing or importing party's financial statements.

(ii) The CPA shall issue a report, the “primary auditor's report,” reflecting his or her opinion as to whether the annual statement presents fairly, in all material respects, the number of digital

audio recording devices and media that were imported and distributed, or manufactured and distributed, by the manufacturing or importing party during the relevant year, and the amount of royalty payments applicable to them under 17 U.S.C. chapter 10, in accordance with that law and these regulations.

(iii) The primary auditor's report shall be filed with the Copyright Office together with the annual Statement of Account, within two months after the end of the annual period for which the annual Statement of Account is prepared. The report may be qualified to the extent necessary and appropriate.

(iv) The Copyright Office does not provide a specific form, or require a specific format, for the CPA's review; however, in addition to the above, certain items must be named as audited items. These include the variables necessary to complete Space C of the Statement of Account form. The CPA may place his or her opinion, which will serve as the "primary auditor's report," in the space provided on Form DART/A, or may attach a separate sheet or sheets containing the opinion.

(v) The auditor's report shall be signed by an individual, or in the name of a partnership or a corporation, and shall include city and state of execution, certificate number, jurisdiction of certificate, and date of opinion. The certificate number and jurisdiction are not required if the report is signed in the name of a partnership or a corporation.

(g) Copies of statements of account. A licensee shall file an original and one copy of the statement of account with the Licensing Division of the Copyright Office.

(h) Royalty fee payment . (1) All royalty fees must be paid by a single electronic funds transfer, and must be received in the designated bank by the filing deadline for the relevant accounting period. The following information must be provided as part of the EFT and/or as part of the remittance advice as provided for in circulars issued by the Copyright Office:

(i) Remitter's name and address;

(ii) Name of a contact person, telephone number and extension, and email address;

(iii) The actual or anticipated date that the EFT will be transmitted;

(iv) Type of royalty payment ( i.e. , DART);

(v) Total amount submitted via the EFT;

(vi) Total amount to be paid by year and period;

(vii) Number of Statements of Account that the EFT covers;

(viii) ID numbers assigned by the Licensing Division;

(ix) Legal name of the owner for each Statement of Account.

(2) The remittance advice shall be attached to the Statement(s) of Account. In addition, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Division.

(3) The Office may waive the requirement for payment by electronic funds transfer as set forth in paragraph (1) of this section. To obtain a waiver, the remitter shall submit to the Licensing Division at least 60 days prior to the royalty fee due date a certified statement setting forth the reasons explaining why payment by an electronic funds transfer would be virtually impossible or, alternatively, why it would impose a financial or other hardship on the remitter. The certified statement must be signed by a duly authorized representative of the entity making the payment.

A waiver shall cover only a single payment period. Failure to obtain a waiver may result in the remittance being returned to the remitter.

(i) Documentation. All filing parties shall keep and retain in their possession, for at least three years from the date of filing, all records and documents necessary and appropriate to support fully the information set forth in quarterly and annual statements that they file.

(j) Corrections, supplemental payments, and refunds —(1) General. Upon compliance with the procedures and within the time limits set forth in this paragraph (i), corrections to quarterly and annual Statements of Account will be placed on record, and supplemental royalty fee payments will be received for deposit, or refunds without interest will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by the quarterly or annual Statement of Account, any of the information given in the statement filed in the Copyright Office is incorrect or incomplete; or

(ii) Where, for any reason except that mentioned in paragraph (j)(2) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to quarterly or annual Statements of Account will not be placed on file, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, cases where digital audio recording media were exported) took place later.

(3) Requests that corrections to annual or quarterly Statements of Account be accepted, that fee payments be accepted, or that refunds be issued shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request shall be made in writing and must clearly identify the manufacturing or importing party making the request, the accounting period in question, and the purpose of the request. A request for a refund must be received in the Copyright Office before the expiration of two months from the last day of the applicable Statement of Account filing period. A request made by telephone or by telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, is received in the Copyright Office within the two-month period, and a written request meeting all the conditions of this paragraph (j)(3) is also received in the Copyright Office within 14 days after the end of such two-month period.

(ii) The request must clearly identify the incorrect or incomplete information formerly filed and must provide the correct or additional information.

(iii) In the case where a royalty fee was miscalculated and the amount deposited with the Copyright Office was too large or too small, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with 28 U.S.C. 1746, made and signed in accordance with paragraph (e)(7) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv) Following final processing, all requests will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve manufacturing or importing parties of their full obligations under title 17 of the United



States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(v)(A) The request must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or a certified check, cashier's check, or money order, payable to the Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) Requests that a supplemental royalty fee payment be deposited must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(vi) All requests submitted under paragraph (j) of this section must be signed by the manufacturing or importing party named in the Statement of Account, or the duly authorized agent of that party in accordance with paragraph (e)(7) of this section.

(vii) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the manufacturing or importing party named in the Statement of Account. The Copyright Office will not pay interest on any royalty refunds.

(k) Examination of Statements of Account by the Copyright Office. (1) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division will examine the statement for obvious errors or omissions appearing on the face of the documents and will require that any such obvious errors or omissions be corrected before final processing of the document is completed. If, as the result of communications between the Copyright Office and the manufacturer or importer, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record.

(2) Completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall not be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty was deposited, that the statutory time limits for filing had been met, or that any other requirements of 17 U.S.C. 1001 et. seq. were fulfilled.

(l) Interest on late payments or underpayments. (1) Royalty payments submitted as a result of late payments or underpayments shall include interest, which shall begin to accrue on the first day after the close of the period for filing Statements of Account for all late payments or underpayments of royalties for the digital audio recording obligation occurring within that accounting period. The accrual period shall end on the date the electronic payment submitted by the remitter is received. In cases where a waiver of the electronic funds transfer requirement is approved by the Copyright Office, and royalties payments are either late or underpaid, the accrual period shall end on the date the payment is postmarked. If the payment is not received by

the Copyright Office within five business days of its date, then the accrual period shall end on the date of the actual receipt by the Copyright Office.

(2) The interest rate applicable to a specific accounting period shall be the Current Value of Funds rate in accordance with the Treasury Financial Manual, at 1 TFM 6-8025.40, in effect on the first business day after the close of the filing deadline for the relevant accounting period. The interest rate for a particular accounting period may be obtained by consulting the Federal Register for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is five dollars (\$5.00) or less.

(m) Confidentiality of Statements of Account. Public access to the Copyright Office files of Statements of Account for digital audio recording products shall not be provided. Access will only be granted to interested copyright parties in accordance with regulations prescribed by the Register of Copyrights pursuant to 17 U.S.C. 1003(c).

[59 FR 4589, Feb. 1, 1994, as amended at 64 FR 36575, July 7, 1999; 65 FR 48914, Aug. 10, 2000; 70 FR 30367, May 26, 2005; 70 FR 38022, July 1, 2005; 71 FR 45740, Aug. 10, 2006; 72 FR 33692, June 19, 2007; 73 FR 29073, May 20, 2008]

## **§ 201.29 Access to, and confidentiality of, Statements of Account, Verification Auditor's Reports, and other verification information filed in the Copyright Office for digital audio recording devices or media.**

(a) General. This section prescribes rules covering access to DART Statements of Account, including the Primary Auditor's Reports, filed under 17 U.S.C. 1003(c) and access to a Verifying Auditor's Report or other information that may be filed in the Office in a DART verification procedure as set out in § 201.30. It also prescribes rules to ensure confidential disclosure of these materials to appropriate parties.

(b) Definitions. (1) Access includes inspection of and supervised making of notes on information contained in Statements of Account including Primary Auditor's Reports, Verification Auditor's Reports, and any other verification information.

(2) Audit and Verification Information means the reports of the Primary Auditor and Verifying Auditor filed with the Copyright Office under §§ 201.28 and 201.30, and all information relating to a manufacturing or importing party.

(3) DART Access Form means the form provided by the Copyright Office that must be completed and signed by any appropriate party seeking access to DART confidential material.

(4) DART confidential material means the Quarterly and Annual Statements of Account, including the Primary Auditor's Report that is part of the Annual Statements of Account, and the Verifying Auditor's Report and any other verification information filed with the Copyright Office. It also includes photocopies of notes made by requestors who have had access to these materials that are retained by the Copyright Office.

(5) Interested copyright party means a party as defined in 17 U.S.C. 1001(7).

(6) A Representative is someone, such as a lawyer or accountant, who is not an employee or officer of an interested copyright party or a manufacturing or importing party but is authorized to act on that party's behalf.

(7) Statements of Account means Quarterly and Annual Statements of Account as required under 17 U.S.C. 1003(c) and defined in § 201.28.

(c) Confidentiality. The Copyright Office will keep all DART confidential materials in locked files and disclose them only in accordance with this section. Any person or entity provided with access to DART confidential material by the Copyright Office shall receive such information in confidence and shall use and disclose it only as authorized in 17 U.S.C. 1001 et. seq.

(d) Persons allowed access to DART confidential material. Access to DART Statements of Account filed under 17 U.S.C. 1003(c) and to Verification Auditor's Reports or other verification information is limited to:

(1) An interested copyright party as defined in § 201.29(b)(5) or an authorized representative of an interested copyright party, who has been qualified for access pursuant to paragraph (f)(2) of this section;

(2) The Verifying Auditor authorized to conduct verification procedures under § 201.30;

(3) The manufacturing or importing party who filed that Statement of Account or that party's authorized representative(s); and

(4) Staff of the Copyright Office or the Library of Congress who require access in the performance of their duties under title 17 U.S.C. 1001 et seq.;

(e) Requests for access. An interested copyright party, manufacturing party, importing party, representative, or Verifying Auditor seeking access to any DART confidential material must complete and sign a "DART Access Form." The requestor must submit a copy of the completed DART Access Form to the Licensing Specialist, Licensing Division. The form must be received in the Licensing Division at least 5 working days before the date an appointment is requested. The form may be faxed to the Licensing Division to expedite scheduling, but a copy of the form with the original signature must be filed with the Office.

(1) A representative of an interested copyright party, a manufacturing party or an importing party shall submit an affidavit of his or her authority (e.g., in the form of a letter of authorization from the interested copyright party or the manufacturing or importing party).

(2) An auditor selected to conduct a verification procedure under § 201.30 shall submit an affidavit of his or her selection to conduct the verification procedure.

(3) DART Access Forms may be requested from, and upon completion returned to: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557-6400. They may also be requested or submitted in person at the Licensing Division, Room LM-504, James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC, between 8:30 a.m. and 5 p.m.

(f) Criteria for access to DART confidential material. (1) A Verifying Auditor will be allowed access to any particular Statement of Account and Primary Auditor's Report required to perform his or her verification function;

(2) Interested copyright parties as defined in paragraph (b)(5) of this section will be allowed access to any DART confidential material as defined in paragraph (b)(4) of this section for

verification purposes, except that no interested copyright party owned or controlled by a manufacturing or importing party subject to royalty payment obligations under the Audio Home Recording Act, or who owns or controls such a manufacturing or importing party, may have access to DART confidential material relating to any other manufacturing or importing party. In such cases, a representative of the interested copyright party as defined in paragraph (b)(6) of this section may have access for that party, provided that these representatives do not disclose the confidential information contained in the Statement of Account or Primary Auditor's Report to his or her client.

(3) Access to a Verifying Auditor's Report and any other verification material filed in the Office shall be limited to the interested copyright party(s) requesting the verification procedure and to the manufacturing or importing party whose Statement of Account was the subject of the verification procedure.

(g) Denial of access. Any party who does not meet the criteria described in § 201.29(f) shall be denied access.

(h) Content of DART Access Form. The DART Access Form shall include the following information:

(1) Identification of the Statement of Account and Primary Auditor's Report, the Verification Auditor's Report and other verification materials, or notes prepared by requestors who earlier accessed the same items, to be accessed, by both the name (of the manufacturing party or importing party) and the quarter(s) and year(s) to be accessed.

(2) The name of the interested copyright party, manufacturing party, importing party, or verification auditor on whose behalf the request is made, plus this party's complete address, including a street address (not a post office box number), a telephone number, and a telefax number, if any.

(3) If the request for access is by or for an interested copyright party, a statement indicating whether the copyright party is owned or controlled by a manufacturing or importing party subject to a royalty payment obligation, or whether the interested copyright party owns or controls a manufacturing or importing party subject to royalty payments.

(4) The name, address, and telephone number of the person making the request for access and his/her relationship to the party on whose behalf the request is made.

(5) The specific purpose for the request for access, for example, access is requested in order to verify a Statement of Account; in order to review the results of a verification audit; for the resolution of a dispute arising from such an audit; or in order for a manufacturing or importing party to review its own Statement of Account, Primary Auditor's Report, Verification Auditor's Report, or related information.

(6) A statement that the information obtained from access to Statements of Account, Primary Auditor's Report, Verification Auditor's Report, and any other verification audit filings will be used only for a purpose permitted under the Audio Home Recording Act (AHRA) and the DART regulations.

(7) The actual signature of the party or the representative of the party requesting access certifying that the information will be held in confidence and used only for the purpose specified by the Audio Home Recording Act and these regulations.

[60 FR 25998, May 16, 1995, as amended at 63 FR 30635, June 5, 1998; 64 FR 36575, July 7, 1999; 73 FR 37839, July 2, 2008]

## **§ 201.30 Verification of Statements of Account.**

(a) General. This section prescribes rules pertaining to the verification of information contained in the Statements of Account by interested copyright parties pursuant to section 1003(c) of title 17 of the United States Code.

(b) Definitions —(1) Annual Statement of Account, generally accepted auditing standards (GAAS), and primary auditor have the same meaning as the definition in § 201.28 of this part.

(2) Filer is a manufacturer or importer of digital devices or media who is required by 17 U.S.C. 1003 to file with the Copyright Office Quarterly and Annual Statements of Account and a primary auditor's report on the Annual Statement of Account.

(3) Interested copyright party has the same meaning as the definition in § 201.29 of this part.

(4) Verifying auditor is the person retained by interested copyright parties to perform a verification procedure. He or she is independent and qualified as defined in paragraphs (j)(2) and (j)(3) of this section.

(5) Verification procedure is the process followed by the verifying auditor to verify the information reported on an Annual Statement of Account.

(c) Purpose of verification. The purpose of verification is to determine whether there was any failure of the primary auditor to conduct the primary audit properly or to obtain a reliable result, or whether there was any error in the Annual Statement of Account.

(d) Timing of verification procedure —(1) Requesting a verification procedure. No sooner than three months nor later than three years after the filing deadline of the Annual Statement of Account to be verified, any interested copyright party shall notify the Register of Copyrights of its interest in instituting a verification procedure. Such notification of interest shall also be served at the same time on the filer and the primary auditor identified in the Annual Statement of Account. Such notification shall include the year of the Annual Statement of Account to be verified, the name of the filer, information on how other interested copyright parties may contact the party interested in the verification including name, address, telephone number, facsimile number and electronic mail address, if any, and a statement establishing the party filing the notification as an interested copyright party. The notification of interest may apply to more than one Annual Statement of Account and more than one filer.

(2) Coordination and selection of verifying auditor. The Copyright Office will publish in the Federal Register notice of having received a notification of interest to institute a verification procedure. Interested copyright parties have one month from the date of publication of the Federal Register notice to notify the party interested in instituting the verification procedure of their intent to join with it and to participate in the selection of the verifying auditor. Any dispute about the selection of the verifying auditor shall be resolved by the parties themselves.

(3) Notification of the filer and primary auditor. As soon as the verifying auditor has been selected, and in no case later than two months after the publication in the Federal Register of the notice described in paragraph (d)(2) of this section, the joint interested copyright parties shall notify the Register of Copyrights, the filer, and the primary auditor identified in the Annual

Statement of Account to be verified, that they intend or do not intend to initiate a verification procedure.

(4) Commencement of the verification procedure. The verification procedure shall begin no sooner than one month after notice of intent to initiate a verification procedure was given to the filer and the primary auditor by the joint interested copyright parties. The joint interested copyright parties shall grant the filer or the primary auditor a postponement of the beginning of the verification procedure of up to one additional month if either one requests it. Verification procedures shall be conducted at reasonable times during normal business hours.

(5) Anti-duplication rules. A filer shall be subject to no more than one verification procedure per calendar year. An Annual Statement of Account shall be subject to a verification procedure only once.

(e) Scope of verification. The verifying auditor shall limit his or her examination to verifying the information required in the Annual Statement of Account. To the extent possible, the verifying auditor shall inspect the information contained in the primary auditor's report and the primary auditor's working papers. If the verifying auditor believes that access to the records, files, or other materials in the control of the filer is required according to GAAS, he or she may, after consultation with the primary auditor, require the production of these documents as well. The verifying auditor and the primary auditor shall act in good faith using reasonable professional judgment, with the intention of reaching a reasonable accommodation as to the necessity and scope of examination of any additional documents, but the decision to require the production of additional documents is solely that of the verifying auditor.

(f) Verification report. Upon concluding the verification procedure, the verifying auditor shall render a report enumerating in reasonable detail the procedures performed by the verifying auditor and his or her findings. Such findings shall state whether there was any failure of the primary auditor to conduct properly the primary audit or obtain a reliable result, and whether there was any error in the Annual Statement of Account, itemized by amount and by the filer's elected fiscal year. If there was such failure or error, the report shall specify all evidence from which the verifying auditor reached such conclusions. Such evidence shall be listed and identified in an appendix to the report in sufficient detail to enable a third party to reasonably understand or interpret the evidence on which the verifying auditor based his or her conclusion. If there was no such failure or error, the report shall so state.

(g) Distribution of report. Copies of the verifying auditor's report shall be subject to the confidentiality provisions of § 201.29 and shall be distributed as follows:

- (1) One copy, excluding the appendix, if applicable, shall be filed with the Register of Copyrights.
- (2) One copy, with the appendix, if applicable, shall be submitted to each of the interested copyright parties who retained the services of the verifying auditor and who are authorized to receive such information according to § 201.29.
- (3) One copy, with the appendix, if applicable, shall be submitted to the filer of the Annual Statement of Account.
- (4) One copy, with the appendix, if applicable, shall be submitted to the primary auditor.

(h) Retention of report. The Register of Copyrights will retain his or her copy of the verifying auditor's report for three years following the date the copy of the verifying auditor's report is filed.

(i) Costs of verification. The joint interested copyright parties who requested the verification procedure shall pay the fees of the verifying auditor and the primary auditor for their work performed in connection with the verification procedure, except, if the verification procedure results in a judicial determination or the filer's agreement that royalty payments were understated on the Annual Statement of Account, then,

(1) if the amount is less than five percent (5%) of the amount stated on the Annual Statement of Account, that amount shall first be used to pay the fees of the verifying auditor and the primary auditor, and any remaining amount plus any applicable interest on the total amount shall be deposited, allocated by the filer's elected fiscal year, with the Register of Copyrights, or

(2) if the amount is equal to or greater than five percent (5%) of the amount stated on the Annual Statement of Account, the filer shall pay the fees of the verifying auditor and the primary auditor, and, in addition, shall deposit the amount found to be due plus any applicable interest on the total amount, allocated by the filer's elected fiscal year, with the Register of Copyrights.

(j) Independence and qualifications of verifying auditor. (1) The verifying auditor shall be qualified and independent as defined in this section. If the filer has reason to believe that the verifying auditor is not qualified or independent, it shall raise the matter with the joint interested copyright parties before the commencement of the verification procedure, and if the matter is not resolved, it may raise the issue with the American Institute of Certified Public Accountants' Professional Ethics Division and/or the verifying auditor's State Board of Accountancy while the verification procedure is being performed.

(2) A verifying auditor shall be considered qualified if he or she is a certified public accountant or works under the supervision of a certified public accounting firm.

(3) A verifying auditor shall be considered independent if:

(i) He or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules and Interpretations of such Code applicable generally to attest engagements (collectively, the "AICPA Code"); and

(ii) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

[61 FR 30813, June 18, 1996]

## **§ 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.**

(a) General. This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required by the North American Free Trade Agreement Implementation Act (NAFTA) of December 8, 1993, Public Law No. 103-182. On or after January 3, 1995, the Copyright Office will publish in the Federal Register a list of works for which potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Effective filing. To be effective a Statement of Intent must be complete and timely.

(2) Eligible work means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) Fixed means a work ‘fixed’ in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is ‘fixed’ for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101

(4) Potential copyright owner means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) Published means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

(c) Forms. The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) Requirements for effective Statements of Intent. (1) The document should be clearly designated as a “Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement”.

(2) Statements of Intent must include:



- (i) The title(s) of the work(s) for which copyright restoration is sought, including any underlying work(s) that has a title(s) different from the title of the motion picture, provided all works are owned by the same potential copyright owner;
- (ii) The nation of first fixation;
- (iii) The nation of first publication;
- (iv) The date of first publication;
- (v) The name and mailing address (and telephone and telefax, if applicable) of the potential copyright owner of the work;
- (vi) The following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

(insert Mexico or Canada) and understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice required by U.S. copyright law. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature:

Name (Printed or Typed):

Date:

- (3) If copyright restoration is sought for an underlying work only, the Statement of Intent must specify the kind of underlying work covered and give the title if different from the title of the motion picture.
- (4) More than one motion picture may be included in a single Statement of Intent provided the potential copyright owner is the same for all the motion pictures. The information required in § 201.31 (d)(2)(i) through (d)(2)(iv) must be given for each work.
- (5) Sports programs that do not have a title can be identified in a Statement of Intent by giving the sporting event, the team names and the date (month, day and year).
- (6) Statements of Intent must be received in the Copyright Office on or before December 31, 1994.
- (7) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.
- (e) Fee. The Copyright Office is not requiring a fee for the processing of Statements of Intent.
- (f) Effective date of restoration of copyright protection. (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.
- (2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works

without liability for a period of one year following the Copyright Office's publication in the Federal Register of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) Registration of works whose copyright has been restored. After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

[59 FR 12164, Mar. 16, 1994, as amended at 59 FR 58789, Nov. 15, 1994; 60 FR 50420, Sept. 29, 1995; 66 FR 34373, June 28, 2001]

## **§ 201.32 [Reserved]**

## **§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.**

(a) General. This section prescribes the procedures for submission of Notices of Intent to Enforce a Restored Copyright under the Uruguay Round Agreements Act, as required in 17 U.S.C.

104A(a). On or before May 1, 1996, and every four months thereafter, the Copyright Office will publish in the Federal Register a list of works for which Notices of Intent to Enforce have been filed. It will maintain a list of these works. The Office will also make a more complete version of the information contained in the Notice of Intent to Enforce available on its automated database, which can be accessed over the Internet.

(b) Definitions —(1) NAFTA work means a work restored to copyright on January 1, 1995, as a result of compliance with procedures contained in the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law No. 103-182.

(2) Reliance party means any person who—

(i) With respect to a particular work, engages in acts, before the source country of that work becomes an eligible country under the URAA, which would have violated 17 U.S.C. 106 if the restored work had been subject to copyright protection and who, after the source country becomes an eligible country, continues to engage in such acts;

(ii) Before the source country of a particular work becomes an eligible country, makes or acquires one or more copies or phonorecords of that work; or

(iii) As the result of the sale or other disposition of a derivative work, covered under the new 17 U.S.C. 104A(d)(3), or of significant assets of a person, described in the new 17 U.S.C. 104 A(d)(3) (A) or (B), is a successor, assignee or licensee of that person.

(3) Restored work means an original work of authorship that—

(i) Is protected under 17 U.S.C. 104A(a);

(ii) Is not in the public domain in its source country through expiration of term of protection;

(iii) Is in the public domain in the United States due to—

(A) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(B) Lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(C) Lack of national eligibility; and

(iv) Has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

(4) Source country of a restored work is—

(i) A nation other than the United States; and

(ii) In the case of an unpublished work—

(A) The eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than one author or rightholder, the majority of foreign authors or rightholders are nationals or domiciliaries of eligible countries; or

(B) If the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(iii) In the case of a published work—

(A) The eligible country in which the work is first published; or

(B) If the restored work is published on the same day in two or more eligible countries, the eligible country which has the most significant contacts with the work.

(c) Forms. The Copyright Office does not provide forms for Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such notices follow the format set out in Appendix A of this section and give all of the information listed in paragraph (d) of this section. Notices of Intent to Enforce must be in English, and should be typed or printed by hand legibly in dark, preferably black, ink, on 8 1/2 by 11 inch white paper of good quality, with at least a one inch (or three cm) margin.

(d) Requirements for Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act. (1) Notices of Intent to Enforce should be sent to the following address: GC/I&R, P.O. Box 70400, Washington, DC 20024, USA.

(2) The document should be clearly designated as “Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act”.

(3) Notices of Intent to Enforce must include:

(i) Required information:

(A) The title of the work, or if untitled, a brief description of the work;

(B) An English translation of the title if title is in a foreign language;

(C) Alternative titles if any;

(D) Name of the copyright owner of the restored work, or of an owner of an exclusive right therein;

(E) The address and telephone number where the owner of copyright or the exclusive right therein can be reached; and

(F) The following certification signed and dated by the owner of copyright, or the owner of an exclusive right therein, or the owner's authorized agent:

I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Signature

Name (printed or typed)

As agent for (if applicable)

Date:

(ii) Optional but essential information:

(A) Type of work (painting, sculpture, music, motion picture, sound recording, book, etc.);

(B) Name of author(s);

(C) Source country;

(D) Approximate year of publication;

(E) Additional identifying information (e.g., for movies: director, leading actors, screenwriter, animator; for photographs or books: subject matter; for books: editor, publisher, contributors);

(F) Rights owned by the party on whose behalf the Notice of Intent to Enforce is filed (e.g., the right to reproduce/distribute/publicly display/publicly perform the work, or to prepare a derivative work based on the work, etc.); and

(G) Telefax number at which owner, exclusive rights holder, or agent thereof can be reached.

(4) Notices of Intent to Enforce may cover multiple works provided that each work is identified by title, all the works are by the same author, all the works are owned by the identified copyright owner or owner of an exclusive right, and the rights owned by the party on whose behalf the Notice of Intent is filed are the same. In the case of Notices of Intent to Enforce covering multiple works, the notice must separately designate for each work covered the title of the work, or if untitled, a brief description of the work; an English translation of the title if the title is in a foreign language; alternative titles, if any; the type of work; the source country; the approximate year of publication; and additional identifying information.

(5) Notices of Intent to Enforce works restored on January 1, 1996, may be submitted to the Copyright Office on or after January 1, 1996, through December 31, 1997.

(e) Fee—(1) Amount. The filing fee for recording Notices of Intent to Enforce is prescribed in § 201.3(c).

(2) Method of Payment —(i) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States

institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. International money orders, and postal money orders that are negotiable only at a post office are not acceptable. CURRENCY WILL NOT BE ACCEPTED.

(ii) Copyright Office Deposit Account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Copyright Office, Library of Congress, Washington, DC 20559-6000, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

(iii) Credit cards. For URAA filings the Copyright Office will accept VISA, MasterCard and American Express. Debit cards cannot be accepted for payment. With the NIE, a filer using a credit card must submit a separate cover letter stating the name of the credit card, the credit card number, the expiration date of the credit card, the total amount, and a signature authorizing the Office to charge the fees to the account. To protect the security of the credit card number, the filer must not write the credit card number on the Notice of Intent to Enforce.

(f) Public online access. (1) Almost all of the information contained in the Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system LC MARVEL through the Internet. Except on Federal holidays, this information may be obtained on terminals in the Copyright Office at the Library of Congress Monday through Friday 8:30 a.m. - 5:00 p.m. U.S. Eastern Time or over the Internet Monday - Friday 6:30 a.m. - 9:30 p.m. U.S. Eastern Time, Saturday 8:00 a.m. - 5 p.m., and Sunday 1:00 p.m. - 5:00 p.m.

(2) Alternative ways to connect through Internet are: (i) use the Copyright Office Home Page on the World Wide Web at: <http://lcweb.loc.gov/copyright>, (ii) telnet to [locis.loc.gov](http://locis.loc.gov) or the numeric address 140.147.254.3, or (iii) telnet to [marvel.loc.gov](http://marvel.loc.gov), or the numeric address 140.147.248.7 and log in as `marvel`, or (iv) use a Gopher Client to connect to [marvel.loc.gov](http://marvel.loc.gov).

(3) Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of an exclusive right; the author; the type of work; the date of receipt of the NIE in the Copyright Office; the date of publication in the Federal Register ; the rights covered by the notice; and the address, telephone and telefax number (if given) of the copyright owner.

(4) Online records of Notices of Intent to Enforce are searchable by the title, the copyright owner or owner of an exclusive right, and the author.

(g) NAFTA work. The copyright owner of a work restored under NAFTA by the filing of a NAFTA Statement of Intent to Restore with the Copyright Office prior to January 1, 1995, is not required to file a Notice of Intent to Enforce under this regulation.

# **Appendix A to § 201.33—Notice of Intent To Enforce a Copyright Restored under the Uruguay Round Agreements Act (URAA)**

1. Title:

(If this work does not have a title, state “No title.”) OR

Brief description of work (for untitled works only): \_\_\_\_\_

2. English translation of title (if applicable):

3. Alternative title(s) (if any):

4. Type of work:

(e.g. painting, sculpture, music, motion picture, sound recording, book)

5. Name of author(s):

6. Source country:

7. Approximate year of publication:

8. Additional identifying information:

(e.g. for movies; director, leading actors, screenwriter, animator, for photographs: subject matter; for books; editor, publisher, contributors, subject matter).

9. Name of copyright owner:

(Statements may be filed in the name of the owner of the restored copyright or the owner of an exclusive right therein.)

10. If you are not the owner of all rights, specify the rights you own:

(e.g. the right to reproduce/distribute publicly display/publicly perform the work, or to prepare a derivative work based on the work)

11. Address at which copyright owner may be contacted:

(Give the complete address, including the country and an “attention” line, or “in care of” name, if necessary.)

12. Telephone number of owner:

13. Telefax number of owner:

14. Certification and Signature:

I hereby certify that, for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Signature:

Name (printed or typed):

As agent for (if applicable):

Date:

Note: Notices of Intent to Enforce must be in English, except for the original title, and either typed or printed by hand legibly in dark, preferably black, ink. They should be on 8 1/2 " by 11" white paper of good quality, with at least a 1-inch (or 3 cm) margin.

[60 FR 50420, Sept. 29, 1995, as amended at 63 FR 30635, June 5, 1998; 64 FR 12902, Mar. 16, 1999; 71 FR 31092, June 1, 2006; 73 FR 37839, July 1, 2008]

## **§ 201.34 Procedures for filing Correction Notices of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.**

(a) General. This section prescribes the procedures for submission of corrections of Notices of Intent to Enforce a Copyright (NIEs) Restored under the Uruguay Round Agreements Act of December 8, 1994, as required by 17 U.S.C. 104A(e), as amended by Pub. L. 103-465, 108 Stat. 4809, 4976 (1994).

(b) Definitions. For purposes of this section, the following definitions apply.

(1) Major error. A major error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is an error in the name of the copyright owner or rightholder, or in the title of the work (as opposed to its translation, if any) where such error fails to adequately identify the restored work or its owner through a reasonable search of the Copyright Office NIE records. Omission of, or incorrect information regarding, a written agency relationship also constitutes a major error.

(2) Minor error. A minor error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is any error that is not a major error.

(3) Restored work. For the definition of works restored under the URAA, see 37 CFR 201.33.

(c) Forms. The Copyright Office does not provide forms for Correction Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such Correction NIEs follow the format set out in Appendix A of this section and give all information listed in paragraph (d) of this section. Correction NIEs must be in English, and should be typed or legibly printed by hand in dark, preferably black ink, on 8 1/2 " by 11" white paper of good quality with at least a 1" (or three cm) margin.

(d) Requirements for Correction Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act. (1) A correction for a Notice of Intent to Enforce should be clearly designated as a "Correction Notice of Intent to Enforce" or "Correction NIE."

(2) Correction Notices of Intent to Enforce should be sent to the following address:  
URAA/GATT, NIEs and Registrations, PO Box 70400, Washington, DC 20024, USA.

(3) A Correction NIE shall contain the following information:

(i) The volume and document number of the previous NIE which is to be corrected;

- (ii) The title of the work as it appears on the previous NIE, including alternative titles, if they appear;
- (iii) The English translation of the title, if any, as it appears on the previous NIE;
- (iv) A statement of the erroneous information as it appears on the previous NIE;
- (v) A statement of the correct information as it should have appeared and an optional explanation of its correction; or
- (vi) A statement of the information to be added. This includes optional information such as:
  - (A) Type of work;
  - (B) Rights owned by the party on whose behalf the Correction Notice is filed;
  - (C) Name of author;
  - (D) Source country;
  - (E) Year of publication;
  - (F) Alternative titles;
  - (G) An optional explanation of the added information.
- (vii) The name and address:
  - (A) To which correspondence concerning the document should be sent; and
  - (B) To which the acknowledgment of the recordation of the Correction NIE should be mailed; and
- (viii) A certification. The certification shall consist of:
  - (A) A statement that, for each of the works named above, the person signing the Correction NIE is the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, and that the information is correct to the best of that person's knowledge;
  - (B) The typed or printed name of the person whose signature appears;
  - (C) The signature and date of signature; and
  - (D) The telephone and telefax number at which the owner, rightholder, or agent thereof can be reached.
- (4) A Correction NIE may cover multiple works in multiple NIE documents for one fee provided that: each work is identified by title; all the works are by the same author; all the works are owned by the same copyright owner or owner of an exclusive right. In the case of Correction NIEs, the notice must separately designate each title to be corrected, noting the incorrect information as it appeared on the previously filed NIE, as well as the corrected information. A single notice covering multiple titles need bear only a single certification.
- (5) Copies, phonorecords or supporting documents cannot be made part of the record of a Correction NIE and should not be submitted with the document.
- (6) Time for submitting Correction NIEs. (i) Major errors. The Copyright Office will accept a Correction NIE for a major error concerning a restored work during the 24-month period beginning on the date of restoration of the work, as provided for original NIEs in section 104A(d)(2)(A) of title 17.



(ii) Minor errors. The Office will accept a Correction NIE for a minor error or omission concerning a restored work at any time after the original NIE has been filed, as provided in section 104A(e)(1)(A)(iii) of title 17.

(e) Fee—(1) Amount. The filing fee for recording Correction NIEs is prescribed in § 201.3(c).

(2) Method of payment. See 37 CFR 201.33(e)(1),(2).

(f) Public online access. Information contained in the Correction Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system, available through the Internet. This file is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are the World Wide Web (WWW), using the Copyright Office Home Page at: <http://www.loc.gov/copyright> ; directly to LOCIS through the telnet address at [locis.loc.gov](http://locis.loc.gov); or the Library of Congress through gopher LC MARVEL and WWW which are available 24 hours a day. LOCIS is available 24 hours a day, Monday through Friday. For the purpose of researching the full Office record of Correction NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item “Copyright Office Records” and/or “URAA, GATT Amends U.S. law.” Images of the complete Correction NIEs as filed will be stored on optical disk and will be available from the Copyright Office.

## **Appendix A to § 201.34—Correction Notice of Intent To Enforce**

### **Correction of Notice of Intent To Enforce**

1. Name of Copyright Owner (or owner of exclusive right) If this correction notice is to cover multiple works, the author and the rights owner must be the same for all works covered by the notice.)

2. Title(s) (or brief description)

(a) Work No. 1—\_\_\_

Volume and Document Number: \_\_\_

English Translation: \_\_\_

(b) Work No. 2 (if applicable)—\_\_\_

Volume and Document Number: \_\_\_

English Translation: \_\_\_

(c) Work No. 3 (if applicable)—\_\_\_

Volume and Document Number: \_\_\_

English Translation: \_\_\_

(d) Work No. 4 (if applicable)—\_\_\_

Volume and Document Number: \_\_\_\_

English Translation: \_\_\_\_

3. Statement of incorrect information on earlier NIE:

4. Statement of correct (or previously omitted) information:

Give the following only if incorrect or omitted on earlier NIE:

(a) Type of work \_\_\_\_

(b) Rights owned \_\_\_\_

(c) Name of author (of entire work) \_\_\_\_

(d) Source Country \_\_\_\_

(e) Year of Publication (Approximate if precise year is unknown) \_\_\_\_

(f) Alternative titles \_\_\_\_

5. Explanation of error:

6. Certification and Signature: I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Name and Address (typed or printed):

Telephone/Fax:

As agent for:

Date and Signature:

[62 FR 55739, Oct. 28, 1997, as amended at 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008]

## **§§ 201.35-201.37 [Reserved]**

### **§ 201.38 Designation of agent to receive notification of claimed infringement.**

(a) General. This section prescribes interim rules under which service providers may provide the Copyright Office with designations of agents to receive notification of claimed infringement under section 512(c)(2) of title 17 of the United States Code, as amended. These interim rules shall remain in effect until more comprehensive rules have been promulgated following a notice of proposed rulemaking and receipt of public comments.

(b) Forms. The Copyright Office does not provide printed forms for filing an Interim Designation of Agent to Receive Notification of Claimed Infringement.

(c) Content. An “Interim Designation of Agent to Receive Notification of Claimed Infringement” shall be identified as such by prominent caption or heading, and shall include the following information with respect to a single service provider:

- (1) The full legal name and address of the service provider;
- (2) All names under which the service provider is doing business;
- (3) The name of the agent designated to receive notification of claimed infringement;
- (4) The full address, including a specific number and street name or rural route, of the agent designated to receive notification of claimed infringement. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location;
- (5) The telephone number, facsimile number, and electronic mail address of the agent designated to receive notification of claimed infringement.

(d) Signature. The Interim Designation of Agent to Receive Notification of Claimed Infringement shall include the signature of the appropriate officer or representative of the service provider designating the agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(e) Filing. A service provider may file the Interim Designation of Agent to Receive Notification of Claimed Infringement with the Copyright Information Section, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC, during normal business hours, 9 am to 5 pm. If mailed, the Interim Designation should be addressed to: Copyright GC/I&R, PO Box 70400, Washington, DC 20024. Each designation shall be accompanied by a filing fee for Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under section 512(c)(2) in the amount prescribed in § 201.3(c). Designations and amendments will be posted online on the Copyright Office's website ( <http://www.loc.gov/copyright> ).

(f) Amendments. In the event of a change in the information reported in an Interim Designation of Agent to Receive Notification of Claimed Infringement, a service provider shall file with the Copyright Information Section an amended Interim Designation of Agent to Receive Notification of Claimed Infringement, containing the current information required by § 201.38(c). The amended Interim Designation shall be signed in accordance with the requirements of § 201.38(d) and shall be accompanied by a fee equal to the amount prescribed in § 201.3(c) for Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under section 512(c)(2).

(g) Termination and dissolution. If a service provider terminates its operations, the entity shall notify the Copyright Office by certified or registered mail.

[63 FR 59234, Nov. 3, 1998, as amended at 67 FR 38005, May 31, 2002; 72 FR 5932, Feb. 8, 2007; 73 FR 37839, July 2, 2008]

## **§ 201.39 Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price.**

(a) General. This section prescribes rules under which copyright owners or their agents may provide notice to qualified libraries and archives (including a nonprofit educational institution that functions as such) that a published work in its last 20 years of copyright protection is subject to normal commercial exploitation, or that a copy or phonorecord of the work can be obtained at a reasonable price, for purposes of section 108(h)(2) of title 17 of the United States Code.

(b) Format. The Copyright Office provides a required format for a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price, and for continuation sheets for group notices. The required format is set out in Appendix A to this section, and is available from the Copyright Office website ( <http://lcweb.loc.gov/copyright> ). The Copyright Office does not provide printed forms. The Notice shall be in English (except for an original title, which may be in another language), typed or printed legibly in dark ink, and shall be provided on 8 1/2 × 11 inch white paper with a one-inch margin.

(c) Required content. A “Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price” shall be identified as such by prominent caption or heading, and shall include the following:

- (1) The acronym NLA in capital, and preferably bold, letters in the top right-hand corner of the page;
- (2) A check-box just below the acronym NLA indicating whether continuation sheets for additional works are attached;
- (3) The title of the work, or if untitled, a brief description of the work;
- (4) The author(s) of the work;
- (5) The type of work (e.g., music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.);
- (6) The edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, translation, French version). If there is no information relating to the edition or version of the work, the notice should so state;
- (7) The year of first publication;
- (8) The year the work first secured federal copyright through publication with notice or registration as an unpublished work;
- (9) The copyright renewal registration number (except this information is not required for foreign works in which copyright is restored pursuant to 17 U.S.C. 104A);
- (10) The name of the copyright owner (or the owner of exclusive rights);
- (11) If the copyright owner is not the owner of all rights, a specification of the rights owned (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work);
- (12) The name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that the Copyright Office should contact concerning the Notice;

(13) The full legal name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price; and

(14) A declaration made under penalty of perjury that the work identified is subject to normal commercial exploitation, or that a copy or phonorecord of the work is available at a reasonable price.

(d) Additional content. A Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price may include the following:

(1) The original copyright registration number of the work; and

(2) Additional information concerning the work's normal commercial exploitation or availability at a reasonable price.

(e) Signature. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price shall include the signature of the copyright owner or its agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(f) Multiple works. A Notice to Libraries and Archives may be filed for more than one work. The first work shall be identified using the format required for all Notices to Libraries and Archives. Each additional work in the group must be identified on a separate continuation sheet. The required format for the continuation sheet is set out in Appendix B to this section, and is available from the Copyright Office website ( <http://lcweb.loc.gov/copyright> ). A group filing is permitted provided that:

(1) All the works are by the same author;

(2) All the works are owned by the same copyright owner or owner of the exclusive rights therein. If the claimant is not owner of all rights, the claimant must own the same rights with respect to all works in the group;

(3) All the works first secured federal copyright in the same year, through either publication with notice or registration as unpublished works;

(4) All the works were first published in the same year;

(5) The person or entity that the Copyright Office should contact concerning the Notice is the same for all the works; and

(6) The person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price is the same for all the works.

(g) Filing —(1) Method of filing. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price should be addressed to: NLA, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by hand, it should be delivered during normal business hours, 8:30 a.m. to 5:00 p.m., to the Copyright Information Section, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC.

(2) Amount. The filing fee for recording Notice to Libraries and Archives is prescribed in § 201.3(d).

(3) Method of payment —(i) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. Postal money orders that are negotiable only at a post office and international money orders are not acceptable. CURRENCY IS NOT ACCEPTED.

(ii) Copyright Office Deposit Account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts, visit the Copyright Office website or write: Copyright Office, Library of Congress, Washington, DC 20559-6000, and request a copy of Circular 5, “How to Open and Maintain a Deposit Account in the Copyright Office.”

## **Appendix A to § 201.39—Required Format of Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price**

NLA

Check box if continuation sheets for additional works are attached.

### **Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price**

1. Title of the work (or, if untitled, a brief description of the work): \_\_\_\_\_.
2. Author(s) of the work: \_\_\_\_\_.
3. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): \_\_\_\_\_.
4. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, “No information available”: \_\_\_\_\_.
5. Year of first publication: \_\_\_\_\_.
6. Year the work first secured federal copyright through publication with notice or registration as an unpublished work: \_\_\_\_\_.
7. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): \_\_\_\_\_.
8. Full legal name of the copyright owner (or the owner of exclusive rights): \_\_\_\_\_.
9. The person or entity identified in space #8 owns:

- all rights.
- the following rights (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work): \_\_\_\_\_.

10. Person or entity that the Copyright Office should contact concerning the Notice:

- Name:
- Address:
- Telephone:
- Fax number (if any):
- E-mail address (if any):

11. Person or entity that libraries and archives may contact concerning the work's normal commercial exploitation or availability at a reasonable price:

- Name:
- Address:
- Telephone:
- Fax number (if any):
- E-mail address (if any):

### **Additional Content (OPTIONAL):**

12. Original copyright registration number: \_\_\_\_\_

13. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: \_\_\_\_\_

### **Declaration:**

I declare under penalty of perjury under the laws of the United States:

- that each work identified in this notice is subject to normal commercial exploitation.
- that a copy or phonorecord of each work identified in this notice is available at a reasonable price.

Signature:

Date:

- Typed or printed name:
- Title:

## **Appendix B to § 201.39—Required Format for Continuation Sheet**

NLA CON

Page \_\_ of \_\_ Pages.

## **Continuation Sheet for NLA Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price**

1. Title of the work (or, if untitled, a brief description of the work): \_\_\_\_\_.
2. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): \_\_\_\_\_.
3. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": \_\_\_\_\_.
4. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): \_\_\_\_\_.

### **Additional Content (OPTIONAL):**

5. Original copyright registration number: \_\_\_\_\_.
6. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: \_\_\_\_\_.

[63 FR 71787, Dec. 30, 1998, as amended at 66 FR 34373, June 28, 2001; 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008]

## **§ 201.40 Exemption to prohibition against circumvention.**

(a) General. This section prescribes the classes of copyrighted works for which the Librarian of Congress has determined, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), that noninfringing uses by persons who are users of such works are, or are likely to be, adversely affected. The prohibition against circumvention of technological measures that control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to such users of the prescribed classes of copyrighted works.

(b) Classes of copyrighted works. Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following classes of copyrighted works:

(1) Literary works, distributed electronically, that are protected by technological measures which either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies in the following instances:

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels; or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.



(2) Computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the telephone handset.

(3) Computer programs, in the form of firmware or software, that enable a wireless telephone handset originally acquired from the operator of a wireless telecommunications network or retailer no later than ninety days after the effective date of this exemption to connect to a different wireless telecommunications network, if the operator of the wireless communications network to which the handset is locked has failed to unlock it within a reasonable period of time following a request by the owner of the wireless telephone handset, and when circumvention is initiated by the owner, an individual consumer, who is also the owner of the copy of the computer program in such wireless telephone handset, solely in order to connect to a different wireless telecommunications network, and such access to the network is authorized by the operator of the network.

(4) Motion pictures, as defined in 17 U.S.C. 101, on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary because reasonably available alternatives, such as noncircumventing methods or using screen capture software as provided for in alternative exemptions, are not able to produce the level of high-quality content required to achieve the desired criticism or comment on such motion pictures, and where circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

(i) In noncommercial videos;

(ii) In documentary films;

(iii) In nonfiction multimedia ebooks offering film analysis; and

(iv) For educational purposes in film studies or other courses requiring close analysis of film and media excerpts, by college and university faculty, college and university students, and kindergarten through twelfth grade educators. For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity's use is noncommercial.

(5) Motion pictures, as defined in 17 U.S.C. 101, that are lawfully made and acquired via online distribution services and that are protected by various technological protection measures, where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary because reasonably available alternatives, such as noncircumventing methods or using screen capture software as provided for in alternative exemptions, are not able to produce the level of high-quality content required to achieve the desired criticism or comment on such motion pictures, and where circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

(i) In noncommercial videos;

(ii) In documentary films;

(iii) In nonfiction multimedia ebooks offering film analysis; and

(iv) For educational purposes in film studies or other courses requiring close analysis of film and media excerpts, by college and university faculty, college and university students, and kindergarten through twelfth grade educators. For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity's use is noncommercial.

(6)(i) Motion pictures, as defined in 17 U.S.C. 101, on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where the circumvention, if any, is undertaken using screen capture technology that is reasonably represented and offered to the public as enabling the reproduction of motion picture content after such content has been lawfully decrypted, when such representations have been reasonably relied upon by the user of such technology, when the person engaging in the circumvention believes and has reasonable grounds for believing that the circumvention is necessary to achieve the desired criticism or comment, and where the circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

(A) In noncommercial videos;

(B) In documentary films;

(C) In nonfiction multimedia ebooks offering film analysis; and

(D) For educational purposes by college and university faculty, college and university students, and kindergarten through twelfth grade educators.

(ii) For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity's use is noncommercial.

(7)(i) Motion pictures, as defined in 17 U.S.C. 101, that are lawfully made and acquired via online distribution services and that are protected by various technological protection measures, where the circumvention, if any, is undertaken using screen capture technology that is reasonably represented and offered to the public as enabling the reproduction of motion picture content after such content has been lawfully decrypted, when such representations have been reasonably relied upon by the user of such technology, when the person engaging in the circumvention believes and has reasonable grounds for believing that the circumvention is necessary to achieve the desired criticism or comment, and where the circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

(A) In noncommercial videos;

(B) In documentary films;

(C) In nonfiction multimedia ebooks offering film analysis; and

(D) For educational purposes by college and university faculty, college and university students, and kindergarten through twelfth grade educators.

(ii) For purposes of this exemption, “noncommercial videos” includes videos created pursuant to a paid commission, provided that the commissioning entity's use is noncommercial.

(8) Motion pictures and other audiovisual works on DVDs that are protected by the Content Scrambling System, or that are distributed by an online service and protected by technological measures that control access to such works, when circumvention is accomplished solely to access

the playhead and/or related time code information embedded in copies of such works and solely for the purpose of conducting research and development for the purpose of creating players capable of rendering visual representations of the audible portions of such works and/or audible representations or descriptions of the visual portions of such works to enable an individual who is blind, visually impaired, deaf, or hard of hearing, and who has lawfully obtained a copy of such a work, to perceive the work; provided however, that the resulting player does not require circumvention of technological measures to operate.

(c) Definition. “Specialized format,” “digital text” and “authorized entities” shall have the same meaning as in 17 U.S.C. 121.

[65 FR 64574, Oct. 27, 2000, as amended at 68 FR 62018, Oct. 31, 2003; 71 FR 68479, Nov. 27, 2006; 74 FR 55139, Oct. 27, 2009; 75 FR 43839, July 27, 2010; 75 FR 47465, Aug. 6, 2010; 77 FR 65278, Oct. 26, 2012]

## **PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

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Authority: 17 U.S.C. 408(f), 702

Editorial Note: Nomenclature changes to part 202 appear at 76 FR 27898, May 13, 2011.

## **§ 202.1 Material not subject to copyright.**

The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:

- (a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;
- (b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing;
- (c) Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information;
- (d) Works consisting entirely of information that is common property containing no original authorship, such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources.
- (e) Typeface as typeface.

[24 FR 4956, June 18, 1959, as amended at 38 FR 3045, Feb. 1, 1973; 57 FR 6202, Feb. 21, 1992]

## **§ 202.2 Copyright notice.**

- (a) General. (1) With respect to a work published before January 1, 1978, copyright was secured, or the right to secure it was lost, except for works seeking ad interim copyright, at the date of publication, i.e. , the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time. The adequacy of the copyright notice for such a work is determined by the copyright statute as it existed on the date of first publication.
- (2) If before January 1, 1978, publication occurred by distribution of copies or in some other manner, without the statutory notice or with an inadequate notice, as determined by the copyright statute as it existed on the date of first publication, the right to secure copyright was lost. In such cases, copyright cannot be secured by adding the notice to copies distributed at a later date.
- (3) Works first published abroad before January 1, 1978, other than works for which ad interim copyright has been obtained, must have borne an adequate copyright notice. The adequacy of the copyright notice for such works is determined by the copyright statute as it existed on the date of first publication abroad.
- (b) Defects in notice. Where the copyright notice on a work published before January 1, 1978, does not meet the requirements of title 17 of the United States Code as it existed on December 31, 1977, the Copyright Office will reject an application for copyright registration. Common defects in the notice include, among others the following:

- (1) The notice lacks one or more of the necessary elements ( i.e. , the word “Copyright,” the abbreviation “Copr.,” or the symbol© , or, in the case of a sound recording, the symbol© ; the name of the copyright proprietor, or, in the case of a sound recording, the name, a recognizable abbreviation of the name, or a generally known alternative designation, of the copyright owner; and, when required, the year date of publication);
- (2) The elements of the notice are so dispersed that a necessary element is not identified as a part of the notice; in the case of a sound recording, however, if the producer is named on the label or container, and if no other name appears in conjunction with the notice, his name will be considered a part of the notice;
- (3) The notice is not in one of the positions prescribed by law;
- (4) The notice is in a foreign language;
- (5) The name in the notice is that of someone who had no authority to secure copyright in his name;
- (6) The year date in the copyright notice is later than the date of the year in which copyright was actually secured, including the following cases:
  - (i) Where the year date in the notice is later than the date of actual publication;
  - (ii) Where copyright was first secured by registration of a work in unpublished form, and copies of the same work as later published without change in substance bear a copyright notice containing a year date later than the year of unpublished registration;
  - (iii) Where a book or periodical published abroad, for which ad interim copyright has been obtained, is later published in the United States without change in substance and contains a year date in the copyright notice later than the year of first publication abroad:Provided, however, That in each of the three foregoing types of cases, if the copyright was actually secured not more than one year earlier than the year date in the notice, registration may be considered as a doubtful case.
- (7) A notice is permanently covered so that it cannot be seen without tearing the work apart;
- (8) A notice is illegible or so small that it cannot be read without the aid of a magnifying glass: Provided, however, That where the work itself requires magnification for its ordinary use (e.g., a microfilm, microcard or motion picture) a notice which will be readable when so magnified, will not constitute a reason for rejection of the claim;
- (9) A notice is on a detachable tag and will eventually be detached and discarded when the work is put in use;
- (10) A notice is on the wrapper or container which is not a part of the work and which will eventually be removed and discarded when the work is put to use; the notice may be on a container which is designed and can be expected to remain with the work;
- (11) The notice is restricted or limited exclusively to an uncopyrightable element, either by virtue of its position on the work, by the use of asterisks, or by other means.

[24 FR 4956, June 18, 1959; 24 FR 6163, July 31, 1959, as amended at 37 FR 3055, Feb. 11, 1972; 46 FR 33249, June 29, 1981; 46 FR 34329, July 1, 1981; 60 FR 34168, June 30, 1995; 66 FR 34373, June 28, 2001; 66 FR 40322, Aug. 2, 2001; 77 FR 18707, Mar. 28, 2012; 77 FR 20988, Apr. 9, 2012]

## **§ 202.3 Registration of copyright.**

(a) General. (1) This section prescribes conditions for the registration of copyright, and the application to be made for registration under sections 408 and 409 of title 17 of the United States Code, as amended by Pub. L. 94-553.

(2) For the purposes of this section, the terms audiovisual work , compilation , copy , derivative work , device , fixation , literary work , motion picture , phonorecord , pictorial, graphic and sculptural works , process , sound recording , and their variant forms, have the meanings set forth in section 101 of title 17. The term author includes an employer or other person for whom a work is “made for hire” under section 101 of title 17.

(3) For the purposes of this section, a copyright claimant is either:

(i) The author of a work;

(ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author. <sup>1</sup>

<sup>1</sup> This category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights under the copyright initially belonging to the author, the contractual right to claim legal title to the copyright in an application for copyright registration.

(b) Administrative classification and application forms —(1) Classes of works. For the purpose of registration, the Register of Copyrights has prescribed the classes of works in which copyright may be claimed. These classes, and examples of works which they include, are as follows:

(i) Class TX: Nondramatic literary works. This class includes all published and unpublished nondramatic literary works. Examples: Fiction; nonfiction; poetry; textbooks; reference works; directories; catalogs; advertising copy; and compilations of information.

(ii) Class PA: Works of the performing arts. This class includes all published and unpublished works prepared for the purpose of being performed directly before an audience or indirectly by means of a device or process. Examples: Musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; and motion pictures and other audiovisual works.

(iii) Class VA: Works of the visual arts. This class includes all published and unpublished pictorial, graphic, and sculptural works. Examples: Two dimensional and three dimensional works of the fine, graphic, and applied arts; photographs; prints and art reproductions; maps, globes, and charts; technical drawings, diagrams, and models; and pictorial or graphic labels and advertisements.

(iv) Class SR: Sound recordings. This class includes all published and unpublished sound recordings fixed on and after February 15, 1972. Claims to copyright in literary, dramatic, and musical works embodied in phonorecords may also be registered in this class under paragraph (b)(4) of this section if:

(A) Registration is sought on the same application for both a recorded literary, dramatic, or musical work and a sound recording;

(B) The recorded literary, dramatic, or musical work and the sound recording are embodied in the same phonorecord; and

(C) The same claimant is seeking registration of both the recorded literary, dramatic, or musical work and the sound recording.

(v) Class SE: Serials. A serial is a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. This class includes periodicals; newspapers; annuals; and the journals, proceedings, transactions, etc. of societies.

(2) Submission of application for registration. For purposes of registration, an applicant may submit an application for registration of individual works and certain groups of works electronically through the Copyright Office's Web site, or by using the printed forms prescribed by the Register of Copyrights.

(i) An applicant may submit an application electronically through the Copyright Office Web site [ [www.copyright.gov](http://www.copyright.gov) ]. An online submission requires a payment of the application fee through an electronic fund transfer, credit or debit card, or through a Copyright Office deposit account. Deposit materials in support of the online application may be submitted electronically in a digital format along with the application and payment, or deposit materials in physically tangible formats may be separately mailed to the Copyright Office, using a mailing label generated during the online registration process, or

(ii) (A) Alternatively, an applicant may submit an application on one of the printed forms prescribed by the Register of Copyrights. Each printed form corresponds to a class set forth in paragraph (b)(1) of this section and is so designated ("Form TX"; "Short Form TX", "Form PA"; "Short Form PA", "Form VA"; "Short Form VA", "Form SR"; "Form SE"; "Short Form SE", and "Form SE/Group").

(B) Short form applications may only be used if certain conditions are met. Short Form TX, Short Form PA, and Short Form VA may be used only to register a single work in a case when a living author who is the only author of his or her work is the sole owner of the copyright in the work, the work is not a compilation or derivative work containing a substantial amount of previously published or registered material, and the work is not a work made for hire. Short Form SE may be used only if the claim is in a collective work, the work is essentially an all-new collective work or issue, the author is a citizen or domiciliary of the United States, the work is a work for hire, the author(s) and claimant(s) are the same person(s) or organization(s), and the work was first published in the United States.

(C) Printed form applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed which fall into two or more classes, the application should be submitted in the class most appropriate to the type of authorship that predominates in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed, the application shall be submitted on Form SR.

(D) Copies of the printed forms are available on the Copyright Office's Web site [ [www.copyright.gov](http://www.copyright.gov) ] and upon request to the Copyright Public Information Office, Library of Congress. Printed form applications may be completed and submitted by completing a printed version or using a PDF version of the applicable Copyright Office application form and mailing it together with the other required elements, i.e., physically tangible deposit copies and/or materials, and the required filing fee, all elements being placed in the same package and sent by mail or hand-delivered to the Copyright Office.

(3) Continuation sheets. A continuation sheet (Form CON) is appropriate only in the case when a printed form application is used and where additional space is needed by the applicant to provide all relevant information concerning a claim to copyright. An application may include more than one continuation sheet, subject to the limitations in paragraph (b)(10)(v) of this section.

(4) Registration as a single work. (i) For the purpose of registration on a single application and upon payment of a single registration fee, the following shall be considered a single work:

(A) In the case of published works: all copyrightable elements that are otherwise recognizable as self-contained works, that are included in a single unit of publication, and in which the copyright claimant is the same; and

(B) In the case of unpublished works: all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished "collection." For these purposes, a combination of such elements shall be considered a "collection" if:

(1) The elements are assembled in an orderly form;

(2) The combined elements bear a single title identifying the collection as a whole;

(3) The copyright claimant in all of the elements, and in the collection as a whole, is the same; and

(4) All of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.

Registration of an unpublished "collection" extends to each copyrightable element in the collection and to the authorship, if any, involved in selecting and assembling the collection.

(ii) In the case of applications for registration made under paragraphs (b)(4) through (b)(10) of this section, the "year in which creation of this work was completed", as called for by the application, means the latest year in which the creation of any copyrightable element was completed.

(5) Group registration of related works: Automated databases. (i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for automated databases and their updates or other derivative versions that are original works of authorship, if, where a database (or updates or other revisions thereof), if unpublished, is (or are) fixed, or if published is (or are) published only in the form of machine-readable copies, all of the following conditions are met:

(A) All of the updates or other revisions are owned by the same copyright claimant;

(B) All of the updates or other revisions have the same general title;



- (C) All of the updates or other revisions are similar in their general content, including their subject;
  - (D) All of the updates or other revisions are similar in their organization;
  - (E) Each of the updates or other revisions as a whole, if published before March 1, 1989, bears a statutory copyright notice as first published and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice;
  - (F) Each of the updates or other revisions if published was first published, or if unpublished was first created, within a three-month period in a single calendar year; and
  - (G) The deposit accompanying the application complies with § 202.20(c)(2)(vii)(D).
- (ii) A single registration may be made on one application for both a database published on a single date, or if unpublished, created on a single date, and also for its copyrightable revisions, including updates covering a three-month period in a single calendar year. An application for group registration of automated databases under section 408(c)(1) of title 17 and this subsection shall consist of:
- (A) A form that best reflects the subject matter of the material in the database as set forth in paragraph (b)(2) of this section, completed in accordance with the basic instructions on the form and the Special Instructions for Group Registration of an Automated Database and its Updates or Revisions, except that in the case of an application for group registration of an automated database consisting predominantly of photographs, after consultation and with the permission and under the direction of the Visual Arts Division, the application may be submitted electronically.
  - (B) The appropriate filing fee, as required in § 201.3(c); and
  - (C) The deposit required by § 202.20(c)(2)(vii)(D).
- (6) Group registration of related serials. (i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of serials published at intervals of a week or longer if all the following conditions are met:
- (A) The Library of Congress receives two complimentary copies promptly after publication of each issue of the serial.
  - (B) The single application covers no more than the issues published in a given three month period.
  - (C) The claim to copyright for which registration is sought is in the collective work.
  - (D) The collective work authorship is essentially new material that is being published for the first time.
  - (E) The collective work is a work made for hire.
  - (F) The author(s) and claimant(s) of the collective work is the same person(s) or organization(s).
  - (G) Each issue must have been created no more than one year prior to publication and all issues included in the group registration must have been published in the same calendar year.

(ii) To be eligible for group registration of serials, publishers must submit a letter affirming that two complimentary subscriptions to the particular serial have been entered for the Library of Congress. The letter should be sent to Group Periodicals Registration, Library of Congress, Washington, DC 20540-4161.

(iii) The complimentary subscription copies must be addressed to: Group Periodicals Registration, Library of Congress, Washington, DC 20540-4161.

(iv) The Register of Copyrights may revoke the privilege of group registration of serials for any publisher who fails to submit the required complimentary subscription copies promptly after publication of each issue. Notice of revocation of the group registration of serials privilege shall be given in writing and shall be sent to the individual person or organization applying for group registration of serials, at the last address shown in the records of the Copyright Office. A notice of revocation may be given at any time if the requirements of the regulation are not satisfied, but it shall state a specific date of revocation that is at least 30 days later than the date the notice is mailed.

(v) To apply for registration of a group of serial issues under 408(c)(1) of title 17 and this section, an applicant may file electronically, or submit a completed Form SE/Group.

(A) For applicants filing electronically:

(1) Furnish the requested information for group of serial issues.

(2) Submit the appropriate filing fee, as required in § 201.3(c) of this chapter, for each issue covered by the group registration.

(3) Submit either a digital format which complies with § 202.20(b)(2)(iii) or a deposit consisting of one complete copy of the best edition of each issue included in the group registration.

(B) For applicants filing a completed Form SE/Group, the following must be sent together in the same package:

(1) A completed Form SE/Group, providing the requested information.

(2) The appropriate filing fee, as required in § 201.3(c) of this chapter, for each issue covered by the group registration.

(3) A deposit consisting of one complete copy of the best edition of each issue included in the group registration.

(7) Group registration of daily newspapers . (i) Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, microfilm deposit, and filing fee, a single registration may be made for a group of daily newspapers published in a microfilm format if the following conditions are met:

(A) Registration covers a full month of issues of the same newspaper title published with issue dates in one calendar month.

(B) A completed GDN application form is submitted.

(C) A publication date is specified designating the first and last day that issues in the group were published.

(D) A deposit is made of positive, 35mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month. In addition to the final edition of the daily newspaper, the claim to copyright and the

deposit may also include earlier editions published the same day in a given metropolitan area served by the newspaper, but may not include national or regional editions distributed beyond a given metropolitan area.

(E) The appropriate filing fee, as required in § 201.3(c), is included with the submission or charged to an active deposit account.

(F) Registration is sought within three months after the publication date of the last issue included in the group.

(ii) As used in this regulation, newspapers means serials which are classified as newspapers under the policy document "Newspapers Received Currently in the Library of Congress," which is administered by the Newspaper Section of the Serials & Government Publications Division of the Library of Congress. In general, serials classified as newspapers are serials mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

(8) Group registration of contributions to periodicals. (i) As provided by section 408(c)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, a single registration, on the basis of a single application, deposit, and registration fee, may be made for a group of works if all of the following conditions are met:

(A) All of the works are by the same author;

(B) The author of each work is an individual, and not an employer or other person for whom the work was made for hire;

(C) Each of the works was first published as a contribution to a periodical (including newspapers) within a twelve-month period;<sup>2</sup>

<sup>2</sup> This does not require that each of the works must have been first published during the same calendar year; it does require that, to be grouped in a single application, the earliest and latest contributions must not have been first published more than twelve months apart.

(D) Each of the works, if first published before March 1, 1989, bore a separate copyright notice, and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice; and

(E) The deposit accompanying the application must consist of one of the following: one copy of the entire issue of the periodical, or, in the case of a newspaper, the entire section containing the contribution; tear sheets or proof copies of the contribution; a photocopy of the contribution itself, or a photocopy of the entire page containing the contribution; the entire page containing the contribution cut or torn from the collective work; the contribution cut or torn from the collective work; or photographs or photographic slides of the contribution or entire page containing the contribution as long as all contents of the contribution to be registered are clear and legible.

(ii) An application for group registration under section 408(c)(2) of title 17 and paragraph (b)(8) of this section shall consist of:

(A) A basic application for registration on Form TX, Form PA, or Form VA, 3 which shall contain the information required by the form and its accompanying instructions;

3 The basic application should be filed in the class appropriate to the nature of authorship in the majority of the contributions. However, if any of the contributions consists preponderantly of nondramatic literary material that is in the English language, the basic application for the entire group should be submitted on Form TX.

(B) An adjunct form prescribed by the Copyright Office and designated “Adjunct Application for Copyright Registration for a Group of Contributions to Periodicals (Form GR/CP)”, which shall contain the information required by the form and its accompanying instructions; and

(C) The appropriate filing fee, as required in § 201.3(c), and the deposit required by paragraph (b)(8)(i)(E) of this section.

(9) Group registration of daily newsletters . Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of two or more issues of a daily newsletter if the following conditions are met:

(i) As used in this regulation, daily newsletter means a serial published and distributed by mail or electronic media (online or telefacsimile), or in any medium including but not limited to, paper, cassette tape, diskette or CD-ROM. Publication must occur on at least two days each week and the newsletter must contain news or information of interest chiefly to a special group (for example, trade and professional associations, corporate in-house groups, schools, colleges, or churches).

(ii) The works must be essentially all new collective works or all new issues that have not been published before.

(iii) Each issue must be a work made for hire.

(iv) The author(s) and claimant(s) must be the same person(s) or organization(s) for all of the issues.

(v) All the items in the group must bear issue dates within a single calendar month under the same continuing title.

(vi) Deposit. (A). The deposit for newsletters registered under this section is one complete copy of each issue included in the group.

(B). In addition, if requested in writing by the Copyright Acquisitions Division before an application for registration is submitted, the claimant must give the Library of Congress whichever of the following the Library prefers: either as many as two complimentary subscriptions of the newsletter in the edition most suitable to the Library's needs, or a single positive, 35 mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month. Subscription copies must be delivered to the separate address specified by the Copyright Acquisitions Division in its request. Subscription copies or a microfilm are not required unless expressly requested by the Copyright Acquisitions Division.

(C) The copyright owner of any newsletter that cannot meet the criteria set out in this section may continue to register on Form SE or Short Form SE.

(vii) Registration is sought within three months after the publication date of the last issue included in the group.

(viii) A Form G/DN shall be submitted for daily newsletters bearing issue dates within a single month, together with one copy of each issue, and a filing fee. The application shall designate the first and last day that issues in the group were published.

(10) Group registration of published photographs. Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights will accept a single application (on Form VA), deposit and filing fee for registration of a group of photographs if the following conditions are met:

(i) The copyright claimant in all of the photographs must be the same.

(ii) The photographer who photographed each of the photographs submitted for registration as part of the group must be the same person.

(iii) The photographs in the group must have been published within the same calendar year.

(iv) If the photographs in a group were all published on the same date, the date of publication must be identified in space 3b of the application. If the photographs in a group were not all published on the same date, the range of dates of publication (e.g., February 15-September 15, 2004) must be provided in space 3b of the application, and the date of publication of each photograph within the group must be identified either:

(A) On each deposited image;

(B) In a text file on the CD-ROM or DVD that contains the deposited photographic images;

(C) On a list that accompanies the deposit and provides the publication date for each image; or

(D) On a special continuation sheet (Form GR/PPh/CON) provided by the Copyright Office.

Dates of publication must be provided in a way that clearly identifies the date of publication for each individual photograph in the group.

(v) If the applicant chooses to identify the date of publication for each photograph in the group on a continuation sheet, the application may include no more than 50 continuation sheets identifying no more than 750 photographs. For these purposes, the applicant must use the special continuation sheet (Form GR/PPh/CON) for registration of a group of photographs made available by the Copyright Office.

(vi) If each photograph within the group was first published within three months before the date on which an acceptable application, an acceptable deposit, and the applicable fee are received in the Copyright Office, the applicant may, in lieu of the procedure set forth in paragraph

(b)(10)(iv) of this section, simply state the range of dates of publication (e.g., February 15-May 15, 2001) in space 3b of the application, without specifically identifying the date of publication of each photograph in the group either on the deposited image or on a continuation sheet.

(vii) The deposit(s) and application must be accompanied by the fee set forth in § 201.3(c) of this chapter for a basic registration.

(viii) The applicant must state "Group Registration/Photos" and state the approximate number of photographs included in the group in space 1 of the application Form VA under the heading "Previous or Alternative Titles" (e.g., "Group Registration/Photos; app. 450 photographs").

(ix) If the photographs in the group are works made for hire, the applicant must note, as part of the applicant's entry in space 2 of the application Form VA for "Name of Author," both the name

of the employer for hire and the name of the photographer who photographed the works in the group (e.g., “XYZ Corporation, employer for hire of John Doe”).

(x) As an alternative to the best edition of the work, one copy of each photograph shall be submitted in one of the formats set forth in § 202.20(c)(2)(xx).

(xi) Instead of using Form VA, an applicant may submit an electronic application for group registration of published photographs after consultation and with the permission and under the direction of the Visual Arts Division.

(11) One registration per work. As a general rule only one copyright registration can be made for the same version of a particular work. However:

(i) Where a work has been registered as unpublished, another registration may be made for the first published edition of the work, even if it does not represent a new version;

(ii) Where someone other than the author is identified as copyright claimant in a registration, another registration for the same version may be made by the author in his or her own name as copyright claimant;<sup>4</sup>

<sup>4</sup> An author includes an employer or other person for whom a work is “made for hire” under 17 U.S.C. 101. This paragraph does not permit an employee or other person working “for hire” under that section to make a later registration in his or her own name. In the case of authors of a joint work, this paragraph does permit a later registration by one author in his or her own name as copyright claimant, where an earlier registration identifies only another author as claimant.

(iii) Where an applicant for registration alleges that an earlier registration for the same version is unauthorized and legally invalid, a registration may be made by that applicant; and

(iv) Supplementary registrations may be made, under the conditions of § 201.5 of these regulations, to correct or amplify the information in a registration made under this section.

(c) Application for registration. (1) An application for copyright registration may be submitted by any author or other copyright claimant of a work, or the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner.

(2) An application for copyright registration shall be submitted by using one of the methods set forth in paragraph (b) of this section. All completed application forms shall be accompanied by the appropriate filing fee, as required in § 201.3(c) of this chapter, and the deposit copies and materials required under 17 U.S.C. 408 and § 202.20. <sup>6</sup> All applications submitted for registration shall supply the information required by the particular application and shall include a certification. The certification shall consist of:

(i) A designation that the party signing the print application, or submitting the application electronically, falls within an accepted status from among the following: author, claimant, an owner of exclusive rights, or a duly authorized agent of the author, claimant, owner of exclusive rights;

(ii) For print applications, the handwritten signature of the party described in paragraph (c)(2)(i) of this section accompanied by the typed or printed name of that party; or, if an electronically submitted application, a name provided within the certification screen of the electronic application which represents a party described in paragraph (c)(2)(i) of this section;

(iii) A declaration that information provided within the application is correct to the best of that party's knowledge; and,

(iv) For print applications, the date of completion of the application form, with the date (month, day, year) printed, typed, or handwritten; or, if an electronically submitted application, the date of electronic receipt of the application by the Copyright Office, which date shall be provided automatically by the Copyright Office.

5 In the case of applications for group registration of newspapers, contributions to periodicals, and newsletters, under paragraphs (b)(7), (b)(8), and (b)(9) of this section, the deposits shall comply with the deposits specified in the respective paragraphs, and the fees with those specified in § 201.3.

An application for registration of a published work will not be accepted if the date of certification is earlier than the date of publication given in the application.

(Pub. L. 94-553; secs. 408, 409, 410, 702)

[43 FR 966, Jan. 5, 1978]

Editorial Note: For Federal Register citations affecting § 202.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov)

## **§ 202.4 Effective date of registration.**

The effective date of registration for claims received in the Copyright Office on or after January 3, 1991, and through December 31, 1991, with a short fee of \$10 is the date on which the application, deposit, and \$10 fee have all been received in the Copyright Office, provided, the claim is later determined to be acceptable for registration by the Register of Copyrights and a supplementary fee of \$10 is received in the Copyright Office. If the supplementary fee is not received promptly after notification of the short fee, the Copyright Office will initiate a proceeding to cancel the copyright registration. If the supplementary fee of \$10 is not received in the Copyright Office before the cancellation proceeding is completed, the cancellation will become final and will result in the loss of the effective date of registration. After cancellation, registration could be obtained only by submitting a new application, deposit, and filing fee.

[55 FR 50001, Dec. 4, 1990]

## **§ 202.5 Reconsideration Procedure for Refusals to Register.**

(a) General. This section prescribes rules pertaining to procedures for administrative review of the Copyright Office's refusal to register a claim to copyright, a mask work, or a vessel hull design upon a finding by the Office that the application for registration does not satisfy the legal requirements of title 17 of the United States Code. If an applicant's initial claim is refused, the applicant is entitled to request that the initial refusal to register be reconsidered.

(b) First reconsideration. Upon receiving a written notification from the Registration Program explaining the reasons for a refusal to register, an applicant may request that the Registration Program reconsider its initial decision to refuse registration, subject to the following requirements:

(1) An applicant must request in writing that the Registration Program reconsider its decision. A request for reconsideration must include the reasons the applicant believes registration was

improperly refused, including any legal arguments in support of those reasons and any supplementary information. The Registration Program will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d)(3)(i) of this chapter must accompany the first request for reconsideration.

(3) The first request for reconsideration and the applicable fee must be received by the Copyright Office no later than three months from the date that appears in the Registration Program written notice of its initial decision to refuse registration. When the ending date for the three-month time period falls on a weekend or a Federal holiday, the ending day of the three-month period shall be extended to the next Federal work day.

(4) If the Registration Program decides to register an applicant's work in response to the first request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. However, if the Registration Program again refuses to register the work, it will send the applicant a written notification stating the reasons for refusal within four months of the date on which the first request for reconsideration is received by the Registration Program. When the ending date for the four-month time period falls on a weekend or a Federal holiday, the ending day of the four-month period shall be extended to the next Federal work day. Failure by the Registration Program to send the written notification within the four-month period shall not result in registration of the applicant's work.

(c) Second reconsideration. Upon receiving written notification of the Registration Program's decision to refuse registration in response to the first request for reconsideration, an applicant may request that the Review Board reconsider the Registration Program's refusal to register, subject to the following requirements:

(1) An applicant must request in writing that the Review Board reconsider the Registration Program's decision to refuse registration. The second request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information, and must address the reasons stated by the Registration Program for refusing registration upon first reconsideration. The Board will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d)(3)(ii) of this chapter must accompany the second request for reconsideration.

(3) The second request for reconsideration and the applicable fee must be received in the Copyright Office no later than three months from the date that appears in the Registration Program's written notice of its decision to refuse registration after the first request for reconsideration. When the ending date for the three-month time period falls on a weekend or a Federal holiday, the ending day of the three-month period shall be extended to the next Federal work day.

(4) If the Review Board decides to register an applicant's work in response to a second request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. If the Review Board upholds the refusal to register the work, it will send the applicant a written notification stating the reasons for refusal.

(d) Submission of reconsiderations. (1) All mail, including any that is hand delivered, should be addressed as follows: RECONSIDERATION, Copyright RAC Division, P.O. Box 71380,



Washington, DC 20024-1380. If hand delivered by a commercial, non-government courier or messenger, a request for reconsideration must be delivered between 8:30 a.m. and 4 p.m. to: Congressional Courier Acceptance Site, located at Second and D Streets, NE., Washington, DC. If hand delivered by a private party, a request for reconsideration must be delivered between 8:30 a.m. and 5 p.m. to: Room 401 of the James Madison Memorial Building, located at 101 Independence Avenue, SE., Washington, DC.

(2) The first page of the written request must contain the Copyright Office control number and clearly indicate either “FIRST RECONSIDERATION” or “SECOND RECONSIDERATION,” as appropriate, on the subject line.

(e) Suspension or waiver of time requirements. For any particular request for reconsideration, the provisions relating to the time requirements for submitting a request under this section may be suspended or waived, in whole or in part, by the Register of Copyrights upon a showing of good cause. Such suspension or waiver shall apply only to the request at issue and shall not be relevant with respect to any other request for reconsideration from that applicant or any other applicant.

(f) Composition of the Review Board. The Review Board shall consist of three members; the first two members are the Register of Copyrights and the General Counsel or their respective designees. The third member will be designated by the Register.

(g) Final agency action. A decision by the Review Board in response to a second request for reconsideration constitutes final agency action.

[69 FR 77636, Dec. 28, 2004, as amended at 70 FR 7177, Feb. 11, 2005; 73 FR 37839, July 2, 2008]

## **§§ 202.6-202.9 [Reserved]**

### **§ 202.10 Pictorial, graphic, and sculptural works.**

(a) In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form. The registrability of such a work is not affected by the intention of the author as to the use of the work or the number of copies reproduced. The availability of protection or grant of protection under the law for a utility or design patent will not affect the registrability of a claim in an original work of pictorial, graphic, or sculptural authorship.

(b) A claim to copyright cannot be registered in a print or label consisting solely of trademark subject matter and lacking copyrightable matter. While the Copyright Office will not investigate whether the matter has been or can be registered at the Patent and Trademark Office, it will register a properly filed copyright claim in a print or label that contains the requisite qualifications for copyright even though there is a trademark on it. However, registration of a claim to copyright does not give the claimant rights available by trademark registrations at the Patent and Trademark Office.

[46 FR 33249, June 29, 1981, as amended at 60 FR 15606, Mar. 24, 1995; 61 FR 5445, Feb. 12, 1996]

## **§ 202.11 Architectural works.**

(a) General. This section prescribes rules pertaining to the registration of architectural works, as provided for in the amendment of title 17 of the United States Code by the Architectural Works Copyright Protection Act, title VII of the Judicial Improvements Act of 1990, Public Law 101-650.

(b) Definitions. (1) For the purposes of this section, the term architectural work has the same meaning as set forth in section 101 of title 17, as amended.

(2) The term building means humanly habitable structures that are intended to be both permanent and stationary, such as houses and office buildings, and other permanent and stationary structures designed for human occupancy, including but not limited to churches, museums, gazebos, and garden pavilions.

(c) Registration —(1) Original design. In general, an original design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings, may be registered as an architectural work.

(2) Registration limited to single architectural work. For published and unpublished architectural works, a single application may cover only a single architectural work. A group of architectural works may not be registered on a single application form. For works such as tract housing, a single work is one house model, with all accompanying floor plan options, elevations, and styles that are applicable to that particular model.

(3) Application form. Registration should be sought on Form VA. Line one of the form should give the title of the building. The date of construction of the building, if any, should also be designated. If the building has not yet been constructed, the notation “not yet constructed” should be given following the title.

(4) Separate registration for plans. Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately.

(5) Publication. Publication of an architectural work occurs when underlying plans or drawings of the building or other copies of the building design are distributed or made available to the general public by sale or other transfer of ownership, or by rental, lease, or lending. Construction of a building does not itself constitute publication for purposes of registration, unless multiple copies are constructed.

(d) Works excluded. The following structures, features, or works cannot be registered:

(1) Structures other than buildings. Structures other than buildings, such as bridges, cloverleaves, dams, walkways, tents, recreational vehicles, mobile homes, and boats.

(2) Standard features. Standard configurations of spaces, and individual standard features, such as windows, doors, and other staple building components.

(3) Pre-December 1, 1990 building designs —(i) Published building designs. The designs of buildings where the plans or drawings of the building were published before December 1, 1990, or the buildings were constructed or otherwise published before December 1, 1990.

(ii) Unpublished building designs. The designs of buildings that were unconstructed and embodied in unpublished plans or drawings on December 1, 1990, and remained unconstructed on December 31, 2002.

[57 FR 45310, Oct. 1, 1992, as amended at 68 FR 38630, June 30, 2003]

## **§ 202.12 Restored copyrights.**

(a) General. This section prescribes rules pertaining to the registration of foreign copyright claims which have been restored to copyright protection under section 104A of 17 U.S.C., as amended by the Uruguay Round Agreements Act, Public Law 103-465.

(b) Definitions. (1) For the purposes of this section, restored work and source country, have the definition given in the URAA and § 201.33(b) of this chapter.

(2) Descriptive statement for a work embodied solely in machine-readable format is a separate written statement giving the title of the work, nature of the work (for example: computer program, database, videogame, etc.), plus a brief description of the contents or subject matter of the work.

(c) Registration —(1) General. Application, deposit and filing fee for registration of a claim in a restored work under section 104A, as amended, may be submitted to the Copyright Office on or after January 1, 1996. The submission may be a completely electronic submission, with all required elements transmitted to the Office in electronic form; or, the submission may be partially electronic with the application form and fee submitted electronically and the deposit materials sent in physically tangible format(s). If all elements are submitted in physically tangible form, i.e. , a completed, printed application form, physically tangible deposit copies/materials, and the appropriate filing fee in check, money order, or deposit account charge, all elements must be placed in the same package and sent to the following address: Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000.

(2) GATT form . Application for registration for single works restored to copyright protection under URAA should be made on Form GATT. Form GATT may be submitted by completing Form GATT electronically, submitting the appropriate filing fee electronically, and sending the deposit copies and materials required by paragraph (c)(4) of this section by postal mail; or by printing Form GATT from the Office's website, sending it with the appropriate filing fee and deposit copies and materials required by paragraph (c)(4) of this section in the same package by mail; or by obtaining a Form GATT, completing it, and sending the appropriate filing fee and the deposit copies and materials required by paragraph (c)(4) of this section in the same package by mail. A printed Form GATT may be obtained by calling or writing the Copyright Office Hotline at 202-707-9100. The GATT deposit materials required by paragraph (c)(4) of this section may be submitted for examination and registration electronically. Where, however, the Library of Congress requests a particular work or its identifying material for its collections, the required print deposit materials must be submitted.

(3) Fee —(i) Amount. The filing fee for registering a copyright claim in a restored work is prescribed in § 201.3(c).

(ii) Method of payment —(A) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights.

Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. In addition, international money orders, and postal money orders that are negotiable only at a post office are not acceptable. CURRENCY WILL NOT BE ACCEPTED.

(B) Copyright Office Deposit Account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

(C) Credit cards. For URAA registrations the Copyright Office will accept VISA, MasterCard, and American Express. Debit cards cannot be accepted for payment. With the registration application, an applicant using a credit card must submit a separate cover letter stating the name of the credit card, the credit card number, the expiration date of the credit card, the total amount authorized and a signature authorizing the Office to charge the fees to the account. To protect the security of the credit card number, the applicant must not write the credit card number on the registration application.

(4) Deposit —(i) General. The deposit for a work registered as a restored work under the amended section 104A, except for those works listed in paragraphs (c)(4) (ii) through (iv) of this section, should consist of one copy or phonorecord which best represents the copyrightable content of the restored work. In descending order of preference, the deposit should be:

(A) The work as first published;

(B) A reprint or re-release of the work as first published;

(C) A photocopy or identical reproduction of the work as first published; or

(D) A revised version which includes a substantial amount of the copyrightable content of the restored work with an indication in writing of the percentage of the restored work appearing in the revision.

(ii) Previously registered works. No deposit is needed for works previously registered in the Copyright Office.

(iii) Works embodied solely in machine-readable format. For works embodied only in machine-readable formats, the deposit requirements are as follows:

(A) One machine-readable copy and a descriptive statement of the work; or

(B) Representative excerpts of the work, such as printouts; or, if the claim extends to audiovisual elements in the work, a videotape of what appears on the screen.

(iv) Pictorial, graphic and sculptural works. With the exception of 3-dimensional works of art, the general deposit preferences specified under paragraph (c)(4)(i) of this section shall govern. For 3-dimensional works of art, the preferred deposit is one or more photographs of the work, preferably in color.

(v) Special relief. An applicant who is unable to submit any of the preferred deposits may seek an alternative deposit under special relief (37 CFR 202.20(d)). In such a case, the applicant should indicate in writing why the deposit preferences cannot be met, and submit alternative identifying materials clearly showing some portion of the copyrightable contents of the restored work which is the subject of registration.

(vi) Motion pictures. If the deposit is a film print (16 or 35 mm), the applicant should contact the Performing Arts Division of the Registration Program for delivery instructions. The telephone number is: (202) 707-6040; the telefax number is: (202) 707-1236.

(d) Works excluded. Works which are not copyrightable subject matter under title 17 of the U.S. Code, other than sound recordings fixed before February 15, 1972, shall not be registered as restored copyrights.

[60 FR 50422, Sept. 29, 1995, as amended at 64 FR 12902, Mar. 16, 1999; 64 FR 29522, June 1, 1999; 71 FR 31092, June 1, 2006; 72 FR 36888, July 6, 2007; 73 FR 37839, July 2, 2008]

## **§§ 202.13-202.15 [Reserved]**

### **§ 202.16 Preregistration of copyrights.**

(a) General. This section prescribes rules pertaining to the preregistration of copyright claims in works eligible for preregistration under Section 408(f) of 17 U.S.C.

(b) Definitions . For the purposes of this section—

(1) A work is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release if it falls within one of the following classes of works:

(i) Motion pictures;

(ii) Sound recordings;

(iii) Musical compositions;

(iv) Literary works being prepared for publication in book form;

(v) Computer programs (including videogames); or

(vi) Advertising or marketing photographs.

(2) A work is being prepared for commercial distribution if:

(i) The claimant, in a statement certified by the authorized preregistering party, has a reasonable expectation that the work will be commercially distributed to the public; and

(ii) Preparation of the work has commenced and at least some portion of the work has been fixed in a tangible medium of expression, as follows:

(A) For a motion picture, filming of the motion picture must have commenced;

(B) For a sound recording, recording of the sounds must have commenced;

(C) For a musical composition, at least some of the musical composition must have been fixed either in the form of musical notation or in a copy or phonorecord embodying a performance of some or all of the work;

(D) For a literary work being prepared for publication in book form, the actual writing of the text of the work must have commenced;

(E) For a computer program, at least some of the computer code (either source code or object code) must have been fixed; and

(F) For an advertising or marketing photograph, the photograph (or, in the case of a group of photographs intended for simultaneous publication, at least one of the photographs) must have been taken.

(3) A work eligible for preregistration is a work that is:

(i) Unpublished;

(ii) Being prepared for commercial distribution; and

(iii) In a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release.

(c) Preregistration —(1) General . A work eligible for preregistration may be preregistered by submitting an application and fee to the Copyright Office pursuant to the requirements set forth in this section.

(2) Works excluded . Works that are not copyrightable subject matter under title 17 of the U.S. Code may not be preregistered in the Copyright Office.

(3) Application form . An application for preregistration is made using Electronic Form PRE. The application must be submitted electronically on the Copyright Office website at: <http://www.copyright.gov>.

(4) Preregistration as a single work . For the purpose of preregistration on a single application and upon payment of a single preregistration fee, all copyrightable elements that are otherwise recognizable as self-contained works, that are to be included and first published in a single unit of publication, and in which the copyright claimant is the same, shall be considered a single work eligible for preregistration.

(5) Fee —(i) Amount. The filing fee for preregistration is prescribed in § 201.3(c).

(ii) Method of payment . (A) Copyright Office deposit account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services and for those who file applications electronically. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits in that account. Deposit Account holders can charge preregistration fees against the balance in their accounts instead of using credit cards for each request of service. For information on Deposit Accounts, please download a copy of Circular 5, “How to Open and Maintain a Deposit Account in the Copyright Office,” or write the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

(B) Credit cards, debit cards and electronic funds transfer. The online preregistration filing system will provide options for payment by means of credit or debit cards and by means of electronic funds transfers. Applicants will be redirected to the Department of Treasury's Pay.gov

website to make payments with credit or debit cards, or directly from their bank accounts by means of ACH debit transactions.

(C) No refunds. The preregistration filing fee is not refundable.

(6) Description . No deposit of the work being preregistered should be submitted with an application for preregistration. The preregistration applicant should submit a detailed description, of not more than 2,000 characters (approximately 330 words), of the work as part of the application. The description should be based on information available at the time of the application sufficient to reasonably identify the work. Generally, the Copyright Office will not review descriptions for adequacy, but in an action for infringement of a preregistered work, the court may evaluate the adequacy of the description to determine whether the preregistration actually describes the work that is alleged to be infringed, taking into account the information available to the applicant at the time of preregistration and taking into account the legitimate interest of the applicant in protecting confidential information.

(i) For motion pictures, such a description should include the following information to the extent known at the time of filing: the subject matter, a summary or outline, the director, the primary actors, the principal location of filming, and any other information that would assist in identifying the particular work being preregistered.

(ii) For sound recordings, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the work or works recorded, the performer or performing group, the genre of the work recorded (e.g., classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the titles of the musical compositions being recorded, the principal recording location, the composer(s) of the recorded musical compositions embodied on the sound recording, and any other information that would assist in identifying the particular work being preregistered.

(iii) For musical compositions, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the lyrics, if any, the genre of the work (for example, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the performer, principal recording location, record label, motion picture, or other information relating to any sound recordings or motion pictures that are being prepared for commercial distribution and will include the musical composition, and any other detail or characteristic that may assist in identifying the particular musical composition.

(iv) For literary works in book form, the identifying description should include to the extent known at the time of filing: the genre of the book, e.g., biography, novel, history, etc., and should include a brief summary of the work including, the subject matter (e.g., a biography of President Bush, a history of the war in Iraq, a fantasy novel); a description (where applicable) of the plot, primary characters, events, or other key elements of the content of the work; and any other salient characteristics of the book, e.g., whether it is a later edition or revision of a previous work, as well as any other detail which may assist in identifying the literary work in book form.

(v) For computer programs (including videogames), the identifying description should include to the extent known at the time of filing, the nature, purpose and function of the computer program, including the programming language in which it is written, any particular organization or structure in which the program has been created; the form in which it is expected to be published, e.g. as an online-only product; whether there have been previous versions (and identification of such previous versions); the identities of persons involved in the creation of the computer

program; and, if the work is a videogame, also describe the subject matter of the videogame and the overall object, goal or purpose of the game, its characters, if any, and the general setting and surrounding found in the game.

(vi) For advertising or marketing photographs, the description should include the subject matter depicted in the photograph or photographs, including information such as the particular product, event, public figure, or other item or occurrence which the photograph is intended to advertise or market. To the extent possible and applicable, the description for photographs should give additional details which will assist in identifying the particular photographs, such as the party for whom such advertising photographs are taken; the approximate time periods during which the photographs are taken; the approximate number of photos which may be included in the grouping; any events associated with the photographs; and the location and physical setting or surrounding depicted in the photographs. The description may also explain the general presentation, e.g., the lighting, background scenery, positioning of elements of the subject matter as it is seen in the photographs, and should provide any locations and events, if applicable, associated with the photographs.

(7) Review of preregistration information . The Copyright Office will conduct a limited review of applications for preregistration, in order to ascertain whether the application describes a work that is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release. However, a work will not be preregistered unless an applicant has provided all of the information requested on the application and has certified that all of the information provided on the application is correct to the best of the applicant's knowledge.

(8) Certification . The person submitting an application for preregistration must certify on the application that he or she is the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of the work submitted for this preregistration; that the information given in this application is correct to the best of his or her knowledge; that the work is being prepared for commercial distribution; and that he or she has a reasonable expectation that the work will be commercially distributed to the public.

(9) Effective date of preregistration . The effective date of a preregistration is the day on which an application and fee for preregistration of a work, which the Copyright Office later notifies the claimant has been preregistered or which a court of competent jurisdiction has concluded was acceptable for preregistration, have been received in the Copyright Office.

(10) Notification of preregistration . Upon completion of the preregistration, the Copyright Office will provide the claimant official notification by email of the preregistration.

(11) Certification of preregistration . A certified copy of the official notification may be obtained in physical form from the Records Research and Certification Section of the Information and Records Division at the address stated in § 201.1(a)(3) of this chapter.

(12) Public record of preregistration . The preregistration record will also be available to the public on the Copyright Office website, <http://www.copyright.gov>.

(13) Effect of preregistration. Preregistration of a work offers certain advantages to a copyright owner pursuant to 17 U.S.C. 408(f), 411 and 412. However, preregistration of a work does not constitute prima facie evidence of the validity of the copyright or of the facts stated in the application for preregistration or in the preregistration record. The fact that a work has been



preregistered does not create any presumption that the Copyright Office will register the work upon submission of an application for registration.

(14) Petition for recognition of a new class of works . At any time an interested party may petition the Register of Copyrights for a determination as to whether a particular class of works has had a history of copyright infringement prior to authorized release that would justify inclusion of that class of works among the classes of works eligible for preregistration.

[70 FR 61906, Oct. 27, 2005, as amended at 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008]

## **§ 202.17 Renewals**

(a) General. (1) This section concerns renewal for copyrights originally secured from January 1, 1964, through December 31, 1977, either by publication with the required copyright notice or by registration as an unpublished work. Renewal registration for these works is optional. As provided in Pub. L. No. 102-307, 106 Stat. 264, enacted June 26, 1992, renewal registration made during the last year of the original 28-year term of copyright differs in legal effect from renewal registration made during the 67-year extended renewal term. In the latter instance, the copyright is renewed automatically at the expiration of the original 28-year term. In the former instance, renewal by registration during the last year of the original 28-year term vested the renewal copyright in the statutory claimant living on the date of registration.

(2) Works for which copyright was secured before 1964 are governed by the provisions of 17 U.S.C. 304(a) in effect prior to the 1992 date of enactment of Pub. L. No. 102-307. The copyrights in such works could have been renewed by registration only within the last calendar year of the original 28-year term of copyright protection. If renewal registration was not made during that period of time, copyright protection was lost when the original term of copyright expired and cannot be regained.

(3) Works restored to copyright by the Uruguay Round Agreements Act are governed in their copyright term of protection by Pub. L. No. 103-465, 108 Stat. 4809, 4976 (December 8, 1994). Under 17 U.S.C. 104A(a)(1)(A) and (B), as amended, any work in which copyright is restored subsists for the remainder of the term of copyright that the work would have been otherwise granted in the United States. Such term includes the remainder of any applicable renewal term.

(4) Automatic restoration of copyright in certain foreign works that were in the public domain in the United States may have occurred under the Uruguay Round Agreements Act and may be protected by copyright or neighboring rights in their “source country,” as defined at 17 U.S.C. 104A(h)(8).

(b) Definitions . (1) For purposes of this section, the terms assignee and successor, as they pertain to 17 U.S.C. 304(a)(3)(A)(ii), refer to a party which has acquired the renewal copyright in a work by assignment or by other means of legal succession from the statutory claimant [as that claimant is defined in 17 U.S.C. 304(a)(1)(B) and (C)] in whom the renewal copyright vested but in whose name no renewal registration was previously made.

(2) For purposes of this section, a work has been copyrighted when it has been published with a proper copyright notice or, in the case of an unpublished work, when it has been registered for copyright.

(3) For purposes of this section, the term posthumous work means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(4) For purposes of this section, the term statutory claimant means:

(i) A party who was entitled to claim copyright for the renewal term at the time renewal registration was made either as a proprietary claimant, 17 U.S.C. 304(a)(2)(A)(i), or as a personal claimant, 17 U.S.C. 304(a)(2)(B)(i), if registration was made during the original term of copyright; or

(ii) If the original copyright term expired, a party who was entitled to claim copyright for the renewal term as of the last day of the original term of copyright as either a proprietary or a personal claimant, 17 U.S.C. 304(a)(2)(A)(ii) and (a)(2)(B)(ii).

(5) For purposes of this section, the term to vest means to give a fixed, non-contingent right of present or future enjoyment of the renewal copyright in a work. If renewal registration was made during the 28th year of the original term of copyright, the renewal copyright vested in the party or parties entitled to claim such copyright at the time of registration as provided by 17 U.S.C. 304(a)(1)(B) and (C). Although the vested right may have been determined by registration during the 28th year of the original term, the exercise of such right did not commence until the beginning of the renewal term, as provided in 17 U.S.C. 304(a)(2). If renewal registration was not made during the 28th year, the renewal copyright automatically vested upon the beginning of the renewal term in the party or parties entitled to claim such copyright on the last day of the original term as provided by 17 U.S.C. 304(a)(2)(A)(ii) and (B)(ii).

(c) Time limits: original term and renewal term registration . (1) Under 17 U.S.C. 304(a), prior to its amendment of June 26, 1992, a registration for the original term of copyright must have been made during the 28 years of that original term, and a renewal registration must also have been made during the 28th year of that term. Pub. L. No. 102-307, 106 Stat. 264 (June 26, 1992) amended section 304(a) for works originally copyrighted from January 1, 1964, through December 31, 1977, and provided for optional original-term registration and optional renewal registration. 17 U.S.C. 304(a)(2), (a)(3) and 409(11). For such works, claims to renewal copyright could have been registered during the last year of the original term but such registration was not required in order to enjoy statutory protection during the renewal term. 17 U.S.C. 304(a)(3)(B).

(2) A renewal registration can be made at any time during the renewal term. 17 U.S.C. 304(a)(3)(A)(ii). If no original-term registration was made, renewal registration remains possible; but the Register may request information, under 17 U.S.C. 409(11), regarding the original term of copyright. Such information must demonstrate that the work complies with all requirements of the 1909 Act with respect to the existence, ownership, or duration of the copyright for the original term of the work. The Form RE/Addendum is used to provide this information.

(3) Renewal registration is currently available for works copyrighted from January 1, 1964, through December 31, 1977. Under the provisions of 17 U.S.C. 304(a)(3)(A)(ii), renewal registration may be made any time during the 67-year renewal term for such works according to the procedure indicated in paragraph (h) of this section. Such renewal registration is optional and is not a condition of the subsistence of the copyright for the 67-year renewal term. 17 U.S.C. 304(a)(3)(B). In the case of such works for which no registration was made during the original

term of copyright, renewal registration may be made by submission of a Form RE/Addendum. The Addendum, an adjunct to the renewal form, concerns the facts of first publication for a work and assures the Copyright Office that the work as it existed in its original term of copyright was in compliance with the 1909 copyright law, 17 U.S.C. 1, et. seq. (1909 Act, in effect through December 31, 1977), whose provisions govern such works.

(d) Benefits of 28th-year renewal registration . Prior to January 1, 2006, renewal registration was available during the 28th year of the original term of copyright for works copyrighted from January 1, 1964, through December 31, 1977. As provided in Pub. L. No. 102-307, 106 Stat. 264, registration made during the 28th year of the original term of copyright provided the following benefits to the registrant:

(1) The certificate of registration constituted prima facie evidence as to the validity of the copyright during its renewal term and of the facts stated in the certificate. 17 U.S.C. 304(a)(4)(B).

(2) A derivative work prepared under the authority of a grant of a transfer or license of copyright in a work made before the expiration of the original term of copyright could not continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright. 17 U.S.C. 304(a)(4)(A).

(3) The renewal copyright vested upon the beginning of the renewal term in the party entitled to claim the renewal of copyright at the time the application was made as provided under 17 U.S.C. 304(a)(2)(A)(i) and (B)(i).

(e) Statutory parties entitled to claim copyright for the renewal term under Section 304(a). (1) Renewal claims must be registered in the name of the party or parties entitled to claim copyright for the renewal term as provided in paragraphs (e)(2) through (4) of this section and as specified in 17 U.S.C. 304(a). If a work was a new version of a previously published or registered work, renewal registration may be claimed only in the new matter.

(2) If the renewal claim was submitted during the last, i.e. , the 28th, year of the original term of copyright, the claim had to be registered in the name[s] of the statutory claimant[s] entitled to claim the renewal copyright on the date on which the claim was submitted to the Copyright Office. If the renewal claim is submitted during the sixty-seven year extended renewal term, the renewal claim can be registered only in the name[s] of the statutory claimant[s] entitled to claim the renewal on the last day (December 31) of the original term of copyright. These eligible renewal claimants are listed below:

(i) The person who, on the applicable day, was the copyright proprietor is the appropriate renewal claimant in any posthumous work or any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor;

(ii) The person who, on the applicable day, was the copyright proprietor is the appropriate claimant in any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author), or by an employer for whom such work was made for hire;

(iii) For any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the appropriate claimants, in descending order of eligibility, are the person who, on the applicable day, was:

(A) The author(s) of the work, if still living;

(B) The widow(er) and/or child(ren) of the author, if the author was deceased on the applicable day;

(C) The author's executor(s), if still acting in that capacity on the applicable day, provided the author had a will and neither the author, nor any widow(er) or child of the author is still living; or

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower or child of the author is living.

(3) The provisions of paragraphs (e)(1) and (2) of this section are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b)(4) of this section, a renewal claim may be registered in the name of the proprietor of a work, as well as in the name of the appropriate claimant under paragraph (e)(2)(iii) of this section, in any case in which a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of either claim.

(4) The provisions of paragraphs (e)(2)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) The author has left a will which names no executor;

(B) The author has left a will which names an executor who cannot or will not serve in that capacity; or

(C) The author has left a will which names an executor who has been discharged upon settlement of the estate, removed before the estate has been completely administered, or is deceased at the time of the renewal registration submission, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (e) of this section, except in the case where the author has left a will without naming an executor and a court-appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of conflicting renewal claims in such a case should not be interpreted as evidencing the validity of either claim.

(f) Successors/assignees entitled to file an application for the renewal term under Section 304(a). The provisions of paragraph (e) of this section are subject to the following qualifications:

(1) Where no renewal registration has been made in the name of a person or entity identified in paragraphs (e)(2)(i), (ii) and (iii) of this section, a renewal application may be filed at any time during the renewal term by any successor or assignee of such person or entity.

(2) In such cases described in paragraph (f)(1)(i) of this section, the renewal application must identify the party in whom the renewal copyright vested; must indicate the basis upon which copyright for the renewal term vested in that party; must identify the party who is the successor or assignee of the statutory claimant under 17 U.S.C. 304(a)(3); and, must give the manner by which such successor/assignee secured the renewal copyright.

(3) When such a claim has been filed by a successor or assignee in the name of the statutory claimant as described in paragraph (e)(2)(i), (ii) and (iii) of this section, generally no subsequent claims may be filed by other successors or assignees whose rights are derived from the same statutory claimant. If a public record of renewal ownership is sought by other successors or assignees of the same statutory claimant, the document of transfer of the renewal copyright, either the renewal in its entirety or in part, may be recorded in the Copyright Office.

(4) Where a successor or assignee claims the renewal right from the same statutory claimant as does another successor or assignee, the Copyright Office may inquire concerning the situation and, if appropriate, may allow adverse renewal claims from the successors/assignees to be placed on the public record. In such cases, correspondence between the parties filing competing renewal claims and the Copyright Office will be, as always, maintained within Office records and subject to public inspection according to regulations found at 37 CFR 201.2.

(g) Application for renewal registration for a work registered in its original 28-year term . (1) Each application for renewal registration shall be submitted on Form RE. All forms are available free of charge via the Internet by accessing the Copyright Office homepage at <http://www.copyright.gov> . Copies of Form RE are also available free upon request to the Copyright Information Section, United States Copyright Office, Library of Congress, 101 Independence Avenue, Washington, DC 20559-6000.

(2) (i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (e) of this section or by the duly authorized agent of such claimant, or by the successor or assignee of such claimant as provided under paragraph (f) of this section or by the duly authorized agent of such successor or assignee.

(ii) An application for renewal registration shall be accompanied by the required fee as set forth in 37 CFR 201.3. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or a successor or assignee, or the duly authorized agent of such claimant or of such successor or assignee (whose identity shall also be given);

(B) The handwritten signature of such claimant, successor or assignee, or agent, accompanied by the typewritten or printed name of that person;

(C) A declaration that the statements made in the application are correct to the best of that person's knowledge; and

(D) The date of certification.

(3) Once a renewal registration has been made, the Copyright Office will not accept another application for renewal registration on behalf of the same renewal claimant.

(h) Renewal with addendum registration for an unregistered work —(1) General . For published works copyrighted from January 1, 1964, through December 31, 1977, where no registration was made during the original term of copyright and where renewal registration is sought during the 67-year renewal term, the Form RE/Addendum must be used to provide information concerning the original term of copyright. The Form RE/Addendum requires a separate fee and the deposit of one copy or phonorecord of the work as first published (or identifying material in lieu of a copy or phonorecord). The effective date of registration for a renewal claim submitted on a Form

RE/Addendum is the date the Copyright Office receives an acceptable completed application, the required fees, and an acceptable deposit for the work.

(2) Time Limits . A renewal claim accompanied by an Addendum to Form RE may be filed at any time during the 67-year renewal term.

(3) Content . The Form RE/Addendum must contain the following information:

(i) The title of the work;

(ii) The name of the author(s);

(iii) The date of first publication of the work;

(iv) The nation of first publication of the work;

(v) The citizenship of the author(s) on the date of first publication of the work;

(vi) The domicile of the author(s) on the date of first publication of the work;

(vii) An averment that, at the time of first publication, and thereafter until March 1, 1989 [effective date of the Berne Implementation Act of 1988], all the copies or phonorecords of the work, including reprints of the work, published, i.e. , publicly distributed in the United States or elsewhere, under the authority of the author or other copyright proprietor, bore the copyright notice required by the Copyright Act of 1909 and that United States copyright subsists in the work;

(viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act of 1909 as it existed at the time the work was published, the Form RE/Addendum must also contain information about the country of manufacture and the manufacturing processes; and

(ix) The handwritten signature of the renewal claimant or successor or assignee, or the duly authorized agent of the claimant or of the successor or assignee. The signature shall be accompanied by the printed or typewritten name of the person signing the Addendum and by the date of the signature; and shall be immediately preceded by a declaration that the statements made in the application are correct to the best of that person's knowledge.

(4) Fees . Form RE and Form RE/Addendum must be accompanied by the required fee for each form as required in 37 CFR 201.3.

(5) Deposit requirement . One copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in 37 CFR 202.20 and 202.21 is required.

(6) Waiver of the deposit requirement . Where the renewal applicant asserts that it is either impossible or otherwise an undue hardship to satisfy the deposit requirements of 37 CFR 202.20 and 202.21, the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in descending order of preference. In every case, however, proof of the copyright notice showing the content and location of the notice as it appeared on copies or phonorecords of the work as first published must be included.

(i) A reproduction of the entire work as first published (e.g., photocopy, videotape, audiotape, CD-ROM, DVD are examples of physical media which may hold reproductions of a work as first

published). If the work is a contribution to a periodical, a reproduction of only the contribution (including the relevant copyright notice) will suffice.

(ii) A reprint of the work (e.g., a later edition, a later release of a phonorecord, or the like). The reprint must show the copyright notice as it appeared in the same location within the first published copy of the work as well as the exact content of the copyright notice appearing in the first published edition. If the copyrightable content of the reprint differs from that of the first published edition, an explanation of the differences between the two editions is required.

(iii) Identifying material including a reproduction of the greatest feasible portion of the copyrightable content of a work including a photocopy or photograph of the title page, title screen, record label or the like, as first published, and a photocopy or photograph showing the copyright notice content and location as first published. The Copyright Office may request deposit of additional material if the initial submission is inadequate for examination purposes.

[72 FR 61803, Nov. 1, 2007, as amended at 73 FR 37839, July 2, 2008]

## **§ 202.18 [Reserved]**

## **§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.**

(a) General . This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) Definitions. For the purposes of this section:

(1)(i) The best edition of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes. The “best edition” requirement is described in detail at Appendix B to this part.

(ii) Criteria for selection of the “best edition” from among two or more published editions of the same version of the same work are set forth in the statement entitled “Best Edition of Published Copyrighted Works for the Collections of the Library of Congress” (hereafter referred to as the “Best Edition Statement”) in effect at the time of deposit.

(iii) Where no specific criteria for the selection of the “best edition” are established in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the “best edition.” In such cases:

(A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the “best edition” and (except in cases for which special relief is granted) will require deposit of that edition; and

(B) When a potential depositor is uncertain which of two or more published editions comprises the “best edition”, inquiry should be made to the Copyright Acquisitions Division.

(iv) Where differences between two or more “editions” of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of “best edition” based on such differences do not apply.

(2) A complete copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a “complete” phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container). In the case of a musical composition published in copies only, or in both copies and phonorecords:

(i) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a “complete” copy; and

(ii) If the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a “complete” copy.

In the case of a motion picture, a copy is “complete” if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions. In the case of an electronic work published in the United States and available only online, a copy is “complete” if it includes all elements constituting the work in its published form, i.e. , the complete work as published, including metadata and formatting codes otherwise exempt from mandatory deposit.

(3) The terms architectural works , copies , collective work , device , fixed , literary work , machine , motion picture, phonorecord , publication , sound recording , useful article , and their variant forms, have the meanings given to them in 17 U.S.C. 101.

(4) For purposes of § 202.19(c)(5) of this regulation, an electronic serial is an electronic work published in the United States and available only online, issued or intended to be issued on an established schedule in successive parts bearing numerical or chronological designations, without subsequent alterations, and intended to be continued indefinitely. This class includes periodicals, newspapers, annuals, and the journals, proceedings, transactions, and other publications of societies.

(c) Exemptions from deposit requirements. The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.



(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

(5) Electronic works published in the United States and available only online. This exemption includes electronic serials available only online only until such time as a demand is issued by the Copyright Office under the regulations set forth in § 202.24 of these regulations. This exemption does not apply to works that are published in both online, electronic formats and in physical formats, which remain subject to the appropriate mandatory deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textiles and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter, including catalogs, published in connection with the rental lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services.

(8) Tests, and answer material for tests when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole, from the applicable deposit requirements for the collective work.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if:

(i) Registration for the work was made under 17 U.S.C. 408 before the work was published in the United States; or

(ii) Registration for the work was made under 17 U.S.C. 408 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture, from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(d) Nature of required deposit. (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of:

(i) In the case of published works other than sound recordings, two complete copies of the best edition; and

(ii) In the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion pictures, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit of a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library with respect to such copies. In the event of termination of such an agreement by the Library it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by:

(A) Two sets of precise instructions for displaying the image fixed in the hologram; and

(B) Two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(v) In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies in the United States took place by rental, lease, or lending, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multimedia kits, that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vii) In the case of published computer programs and published computerized information works, such as statistical compendia, serials, and reference works that are not copy-protected, the deposit of one complete copy of the best edition as specified in the current Library of Congress Best Edition Statement will suffice in lieu of the two copies required by paragraph (d)(1) of this section. If the works are copy-protected, two copies of the best edition are required.

(viii) In the case of published architectural works, the deposit shall consist of the most finished form of presentation drawings in the following descending order of preference:

(A) Original format, or best quality form of reproduction, including offset or silk screen printing;  
(B) Xerographic or photographic copies on good quality paper;  
(C) Positive photostat or photodirect positive;

(D) Blue line copies (diaz or ozalid process). If photographs are submitted, they should be 8×10 inches and should clearly show several exterior and interior views. The deposit should disclose the name(s) of the architect(s) and draftsman(s) and the building site.

(e) Special relief. (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation:

(i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or

(ii) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or

(iii) Permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or

(iv) Permit the deposit of identifying material which does not comply with § 202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Associate Register for Registration Program, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit made earlier under the grant of special relief.

(f) Submission and receipt of copies and phonorecords. (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by an application for registration of a claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application. Copies or phonorecords deposited without such an accompanying application and either a fee or a deposit account notation will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a certificate of receipt for the deposit of copies or phonorecords of a work under this section. Certificates of receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a certificate of receipt must be in writing and accompanied by the appropriate fee, as required in § 201.3(c). A certificate of receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

[51 FR 6403, Feb. 24, 1986, as amended at 54 FR 42299, Oct. 16, 1989; 56 FR 47403, Sept. 19, 1991; 56 FR 59885, Nov. 26, 1991; 57 FR 45310, Oct. 1, 1992; 60 FR 34168, June 30, 1995; 64 FR 29522, June 1, 1999; 64 FR 62978, Nov. 18, 1999; 66 FR 34373, June 28, 2001; 73 FR 37839, July 2, 2008; 75 FR 3869, Jan. 25, 2010]

## **§ 202.20 Deposit of copies and phonorecords for copyright registration.**

(a) General. This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) Definitions. For the purposes of this section:

(1) The best edition of a work has the meaning set forth in § 202.19(b)(1). For purposes of this section, if a work is first published in both hard copy, i.e., in a physically tangible format, and also in an electronic format, the current Library of Congress Best Edition Statement requirements pertaining to the hard copy format apply.

(2) A complete copy or phonorecord means the following:

(i) Unpublished works. Subject to the requirements of paragraph (b)(2)(vii) of this section, a “complete” copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought;

(ii) Published works. Subject to the requirements of paragraphs (b)(2) (iv) through (vii) of this section, a “complete” copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter. However, even where certain physically separable elements included in the applicable unit of publication are missing from the deposit, a copy or phonorecord will be considered “complete” for purposes of registration where:

(A) The copy or phonorecord deposited contains all parts of the work for which copyright registration is sought; and

(B) The removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and

(C) The work is exempt from the mandatory deposit requirements under section 407 of title 17 of the United States Code and § 202.19(c) of these regulations, or the copy deposited consists entirely of a container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptacle acceptable for deposit under paragraph (c)(2) of this section;

(iii) Works submitted for registration in digital formats . A ‘complete’ electronically filed work is one which is embodied in a digital file which contains:

(A) if the work is unpublished, all authorship elements for which registration is sought; and

(B) if the work is published solely in an electronic format, all elements constituting the work in its published form, i.e. , the complete work as published, including metadata and authorship for which registration is not sought. Publication in an electronic only format requires submission of the digital file[s] in exact first-publication form and content.

(C) For works submitted electronically, any of the following file formats are acceptable for registration: PDF; TXT; WPD; DOC; TIF; SVG; JPG; XML; HTML; WAV; and MPEG family of formats, including MP3. This list of file formats is non-exhaustive and it may change, or be added to periodically. Changes will be noted in the list of acceptable formats on the Copyright Office website.

(D) Contact with the registration applicant may be necessary if the Copyright Office cannot access, view, or examine the content of any particular digital file that has been submitted for the registration of a work. For purposes of section 410(d) of 17 U.S.C., a deposit has not been received in the Copyright Office until a copy that can be reviewed by the Office is received.

(iv) Contributions to collective works. In the case of a published contribution to a collective work, a “complete” copy is one complete copy of the best edition of the entire collective work, the complete section containing the contribution if published in a newspaper, the contribution cut from the paper in which it appeared, or a photocopy of the contribution itself as it was published in the collective work.

(v) Sound recordings. In the case of published sound recordings, a “complete” phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations;

(vi) Musical scores. In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) If the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a “complete” copy; and

(B) If the only publication of copies took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a “complete” copy;

(vii) Motion pictures. In the case of a published or unpublished motion picture, a copy is “complete” if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms architectural works , copy, collective work , device , fixed , literary work , machine , motion picture , phonorecord , publication , sound recording , transmission program , and useful article , and their variant forms, have the meanings given to them in 17 U.S.C. 101.

(4) A secure test is a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) Title 17 means title 17 of the United States Code, as amended by Pub. L. 94-553.

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considered as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(c) Nature of required deposit. (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, one complete copy or phonorecord of the work either as first published or of the best edition. For purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) General. In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords:

(A) Published three-dimensional cartographic representations of area, such as globes and relief models;

(B) Published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing;

(C) Published greeting cards, picture postcards, and stationery;

(D) Lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or more authors;

(E) Musical compositions published in copies only, or in both copies and phonorecords, if the only publication of copies took place by rental, lease, or lending;

(F) Published multimedia kits or any part thereof;

(G) Works exempted from the requirement of depositing identifying material under paragraph (c)(2)(xi)(B)(5) of this section;

(H) Literary, dramatic, and musical works published only as embodied in phonorecords, although this category does not exempt the owner of copyright in a sound recording;

(I) Choreographic works, pantomimes, literary, dramatic, and musical works published only as embodied in motion pictures;

(J) Published works in the form of two-dimensional games, decals, fabric patches or emblems, calendars, instructions for needle work, needle work and craft kits; and

(K) Works reproduced on three-dimensional containers such as boxes, cases, and cartons.

(ii) Motion pictures . In the case of published or unpublished motion pictures, the deposit of one complete copy will suffice. The deposit of a copy or copies for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. In any case where the deposit copy or copies required for registration of a motion picture cannot be viewed for examining purposes on equipment in the Registration Program of the Copyright Office, the description accompanying the deposit must comply with § 202.21(h) of these regulations. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library of Congress with respect to such copies. In the event of termination of such an agreement by the Library, it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement. In the case of unpublished motion pictures (including television transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy. In the case of colorized versions of motion pictures made from pre-existing black and white motion pictures, in addition to the deposit of one complete copy of the colorized motion picture and the separate description of its contents as specified above, the deposit shall consist of one complete print of the black and white version of the motion picture from which the colorized version was prepared. If special relief from this requirement is requested and granted, the claimant shall make a good faith effort to deposit the best available, near-archival quality black and white print, as a condition of any grant of special relief.

(iii) Holograms . In the case of any work deposited in the form of a three-dimensional hologram, the copy or copies shall be accompanied by:

(A) Precise instructions for displaying the image fixed in the hologram; and

(B) Photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image.

The number of sets of instructions and identifying material shall be the same as the number of copies required. In the case of a work in the form of a two-dimensional hologram, the image of which is visible without the use of a machine or device, one actual copy of the work shall be deposited.

(iv) Certain pictorial and graphic works . In the case of any unpublished pictorial or graphic work, deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of deposit of an actual copy. In the case of a published pictorial or graphic work, deposit of one complete copy, or of identifying material in compliance with § 202.21 of these regulations, may be made and will suffice in lieu of deposit of two actual copies where an individual author is the owner of copyright, and either:

(A) Less than five copies of the work have been published; or

(B) The work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

(v) Commercial prints and labels. In the case of prints, labels, and other advertising matter, including catalogs, published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies except under the conditions of paragraph (c)(2)(xi)(B)( 4 ) of this section.

(vi) Tests. In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: Provided, That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) Computer programs and databases embodied in machine-readable copies other than CD-ROM format . In cases where a computer program, database, compilation, statistical compendium, or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, semiconductor chip products, or the like) other than a CD-ROM format, from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes “identifying portions” shall mean one of the following:

( 1 ) The first and last 25 pages or equivalent units of the source code if reproduced on paper, or at least the first and last 25 pages or equivalent units of the source code if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any. If the program is 50 pages or less, the required deposit will be the entire source code. In the case of revised versions of computer programs, if the revisions occur throughout the entire program, the deposit of the page containing the copyright notice and the first and last 25 pages of source code will suffice; if the revisions do not occur in the first and last 25 pages, the deposit should consist



of the page containing the copyright notice and any 50 pages of source code representative of the revised material; or

( 2 ) Where the program contains trade secret material, the page or equivalent unit containing the copyright notice, if any, plus one of the following: the first and last 25 pages or equivalent units of source code with portions of the source code containing trade secrets blocked-out, provided that the blocked-out portions are proportionately less than the material remaining, and the deposit reveals an appreciable amount of original computer code; or the first and last 10 pages or equivalent units of source code alone with no blocked-out portions; or the first and last 25 pages of object code, together with any 10 or more consecutive pages of source code with no blocked-out portions; or for programs consisting of, or less than, 50 pages or equivalent units, entire source code with the trade secret portions blocked-out, provided that the blocked-out portions are proportionately less than the material remaining, and the remaining portion reveals an appreciable amount of original computer code. If the copyright claim is in a revision not contained in the first and last 25 pages, the deposit shall consist of either 20 pages of source code representative of the revised material with no blocked-out portions, or any 50 pages of source code representative of the revised material with portions of the source code containing trade secrets blocked-out, provided that the blocked-out portions are proportionately less than the material remaining and the deposit reveals an appreciable amount of original computer code. Whatever method is used to block out trade secret material, at least an appreciable amount of original computer code must remain visible.

(B) Where registration of a program containing trade secrets is made on the basis of an object code deposit the Copyright Office will make registration under its rule of doubt and warn that no determination has been made concerning the existence of copyrightable authorship.

(C) Where the application to claim copyright in a computer program includes a specific claim in related computer screen displays, the deposit, in addition to the identifying portions specified in paragraph (c)(2)(vii)(A) of this section, shall consist of:

( 1 ) Visual reproductions of the copyrightable expression in the form of printouts, photographs, or drawings no smaller than 3×3 inches and no larger than 9×12 inches; or

( 2 ) If the authorship in the work is predominantly audiovisual, a one-half inch VHS format videotape reproducing the copyrightable expression, except that printouts, photographs, or drawings no smaller than 3×3 inches and no larger than 9×12 inches must be deposited in lieu of videotape where the computer screen material simply constitutes a demonstration of the functioning of the computer program.

(D) For published and unpublished automated databases, compilations, statistical compendia, and the like, so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes:

( 1 ) Identifying portions shall generally mean either the first and last 25 pages or equivalent units of the work if reproduced on paper or in microform.

( 2 ) Datafile and file shall mean a group of data records pertaining to a common subject matter regardless of their size or the number of data items in them.

( 3 ) In the case of individual registration of a revised version of the works identified in paragraph (c)(2)(vii)(D) of this section, the identifying portions deposited shall contain 50 representative pages or data records which have been added or modified.

( 4 ) If the work is an automated database comprising multiple separate or distinct data files, “identifying portions” shall instead consist of 50 complete data records from each data file or the entire data file, whichever is less, and the descriptive statement required by paragraph (c)(2)(vii)(D)(5) of this section.

( 5 ) In the case of group registration for revised or updated versions of a database, the claimant shall deposit identifying portions that contain 50 representative pages or equivalent units, or representative data records which have been marked to disclose (or do in fact disclose solely) the new material added on one representative publication date if published, or on one representative creation date, if unpublished or in the case of applications for automated databases that predominantly consist of photographs, the claimant shall deposit identifying portions that comply with (D)(8) of this section; the claimant shall, also deposit a brief typed or printed descriptive statement containing the notice of copyright information required under paragraphs (c)(2)(vii)(D)(6) or (7) of this section, if the work bears a notice, and;

( i ) The title of the database;

( ii ) A subtitle, date of creation or publication, or other information, to distinguish any separate or distinct data files for cataloging purposes;

( iii ) The name and address of the copyright claimant;

( iv ) For each separate file, its name and content, including its subject, the origin(s) of the data, and the approximate number of data records it contains; and

( v ) In the case of revised or updated versions of an automated database, information as to the nature and frequency of changes in the database and some identification of the location within the database or the separate data files of the revisions.

( 6 ) For a copyright notice embodied in machine-readable form, the statement shall describe exactly the visually perceptible content of the notice which appears in or with the database, and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.).

( 7 ) If a visually perceptible copyright notice is placed on any copies of the work (or on magnetic tape reels or containers therefor), a sample of such notice must also accompany the statement.

( 8 ) In the case of an application for registration of a database that consists predominantly of photographs (including a group registration for revised or updated versions of such a database), “identifying portions” shall instead consist of all individual photographs included in the claim either in one of the formats set forth in paragraph (c)(2)(xx) of this section or in an electronic format submitted along with the electronic application after consultation and with the permission and under the direction of the Visual Arts Division.

(viii) Machine-readable copies of works other than computer programs, databases, and works fixed in a CD-ROM format . Where a literary, musical, pictorial, graphic, or audiovisual work, or a sound recording, except for works fixed in a CD-ROM format and literary works which are computer programs, databases, compilations, statistical compendia or the like, if unpublished has

been fixed or, if published, has been published only in machine-readable form, the deposit must consist of identifying material. The type of identifying material submitted should generally be appropriate to the type of work embodied in machine-readable form, but in all cases should be that which best represents the copyrightable content of the work. In all cases the identifying material must include the title of the work. A synopsis may also be requested in addition to the other deposit materials as appropriate in the discretion of the Copyright Office. In the case of any published work subject to this section, the identifying material must include a representation of the copyright notice, if one exists. Identifying material requirements for certain types of works are specified below. In the case of the types of works listed below, the requirements specified shall apply except that, in any case where the specific requirements are not appropriate for a given work the form of the identifying material required will be determined by the Copyright Office in consultation with the applicant, but the Copyright Office will make the final determination of the acceptability of the identifying material.

(A) For pictorial or graphic works, the deposit shall consist of identifying material in compliance with § 202.21 of these regulations;

(B) For audiovisual works, the deposit shall consist of either a videotape of the work depicting representative portions of the copyrightable content, or a series of photographs or drawings, depicting representative portions of the work, plus in all cases a separate synopsis of the work;

(C) For musical compositions, the deposit shall consist of a transcription of the entire work such as a score, or a reproduction of the entire work on an audiocassette or other phonorecord;

(D) For sound recordings, the deposit shall consist of a reproduction of the entire work on an audiocassette or other phonorecord;

(E) For literary works, the deposit shall consist of a transcription of representative portions of the work including the first and last 25 pages or equivalent units, and five or more pages indicative of the remainder.

(ix) Copies containing both visually-perceptible and machine-readable material other than a CD-ROM format. Where a published literary work is embodied in copies containing both visually-perceptible and machine-readable material, except in the case of a CD-ROM format, the deposit shall consist of the visually-perceptible material and identifying portions of the machine-readable material.

(x) Works reproduced in or on sheetlike materials. In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheetlike materials such as textiles and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy. If the sheet-like material in or on which a published work has been reproduced has been embodied in or attached to a two-dimensional object such as wearing apparel, bed linen, or

a similar item, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy unless the copy can be folded for storage in a form that does not exceed four inches in thickness.

(xi) Works reproduced in or on three-dimensional objects. (A) In the following cases the deposit must consist of identifying material complying with § 201.21 of these regulations instead of a copy or copies:

( 1 ) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form. Examples of such works include statues, carvings, ceramics, moldings, constructions, models, and maquettes; and

( 2 ) Any two-dimensional or three-dimensional work that, if unpublished, has been fixed, or, if published, has been published only in or on jewelry, dolls, toys, games, except as provided in paragraph (c)(2)(xi)(B)( 3 ) of this section, or any three-dimensional useful article.

(B) In the following cases the requirements of paragraph (c)(2)(xi)(A) of this section for the deposit of identifying material shall not apply:

( 1 ) Three-dimensional cartographic representations of area, such as globes and relief models;

( 2 ) Works that have been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works;

( 3 ) Published games consisting of multiple parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than 12×24×6 inches;

( 4 ) Works reproduced on three-dimensional containers or holders such as boxes, cases, and cartons, where the container or holder can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage, and the copy, when flattened, does not exceed 96 inches in any dimension; or

( 5 ) Any three-dimensional sculptural work that, if unpublished, has been fixed, or, if published, has been published only in the form of jewelry cast in base metal which does not exceed four inches in any dimension.

(xii) Soundtracks. For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with § 202.21 of these regulations will suffice in lieu of an actual copy of the motion picture.

(xiii) Oversize deposits. In any case where the deposit otherwise required by this section exceeds 96 inches in any dimension, identifying material complying with § 202.21 of these regulations must be submitted instead of an actual copy or copies.

(xiv) Pictorial advertising material. In the case of published pictorial advertising material, except for advertising material published in connection with motion pictures, the deposit of either one copy as published or prepublication material consisting of camera-ready copy is acceptable.

(xv) Contributions to collective works. In the case of published contributions to collective works, the deposit of either one complete copy of the best edition of the entire collective work, the complete section containing the contribution if published in a newspaper, the entire page containing the contribution, the contribution cut from the paper in which it appeared, or a

photocopy of the contribution itself as it was published in the collective work, will suffice in lieu of two complete copies of the entire collective work.

(xvi) Phonorecords. In any case where the deposit phonorecord or phonorecords submitted for registration of a claim to copyright is inaudible on audio playback devices in the Registration Program of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section.

(xvii) Group registration of serials. For group registration of related serials, as specified in § 202.3(b)(6), for applicants filing electronically, the deposit must consist of one complete copy of the best edition of each issue included in the group registration, or a digital format of a complete copy which complies with § 202.20(b)(2)(iii). For applicants filing a completed Form SE/Group, the deposit must consist of one complete copy of the best edition of each issue included in the group registration. In addition, for all filings for group registration of serial issues, two complimentary subscriptions to any serial for which group registration is sought must be entered and maintained in the name of the Library of Congress, and the copies must be submitted regularly and promptly after publication.

(xviii) Architectural works. (A) For designs of unconstructed buildings, the deposit must consist of one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangements of spaces and/or design elements in which copyright is claimed. For archival purposes, the Copyright Office prefers that the drawing submissions consist of the following in descending order of preference:

- ( 1 ) Original format, or best quality form of reproduction, including offset or silk screen printing;
- ( 2 ) Xerographic or photographic copies on good quality paper;
- ( 3 ) Positive photostat or photodirect positive;
- ( 4 ) Blue line copies (diaz or ozalid process).

The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsman(s) and the building site, if known.

(B) For designs of constructed buildings, the deposit must consist of one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangement of spaces and/or design elements in which copyright is claimed. In addition, the deposit must also include identifying material in the form of photographs complying with § 202.21 of these regulations, which clearly discloses the architectural works being registered. For archival purposes, the Copyright Office prefers that the drawing submissions constitute the most finished form of presentation drawings and consist of the following in descending order of preference:

- ( 1 ) Original format, or best quality form of reproduction, including offset or silk screen printing;
- ( 2 ) Xerographic or photographic copies on good quality paper;
- ( 3 ) Positive photostat or photodirect positive;
- ( 4 ) Blue line copies (diaz or ozalid process).

With respect to the accompanying photographs, the Copyright Office prefers 8×10 inches, good quality photographs, which clearly show several exterior and interior views. The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsman(s) and the building site.

(xix) Works fixed in a CD-ROM format . (A) Where a work is fixed in a CD-ROM format, the deposit must consist of one complete copy of the entire CD-ROM package, including a complete copy of any accompanying operating software and instructional manual, and a printed version of the work embodied in the CD-ROM, if the work is fixed in print as well as a CD-ROM. A complete copy of a published CD-ROM package includes all of the elements comprising the applicable unit of publication, including elements that if considered separately would not be copyrightable subject matter or could be the subject of a separate registration.

(B) In any case where the work fixed in a CD-ROM package cannot be viewed on equipment available in the Registration Program of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section, in addition to the deposit of the CD-ROM package.

(xx) Photographs: group registration. For groups of photographs registered with one application under §§ 202.3(b)(4)(i)(B) (unpublished collections) or 202.3(b)(10) (group registration of published photographs) and for automated databases that consist predominantly of photographs under § 202.3(b)(5)(ii)(A), photographs must be deposited in one of the following formats (listed in the Library's order of preference):

(A) Digital form on one or more CD-ROMs (including CD-RW's) or DVD-ROMs, in one of the following formats: JPEG, GIF, TIFF, or PCD;

(B) Unmounted prints measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches);

(C) Contact sheets;

(D) Slides, each with a single image;

(E) A format in which the photograph has been published (e.g., clippings from newspapers or magazines);

(F) A photocopy of each of the photographs included in the group or database, clearly depicting the photograph, provided that if registration is made pursuant to § 202.3(b)(10) for group registration of photographs, the photocopy must be either a photocopy of an unmounted print measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches) or a photocopy of the photograph in a format in which it has been published, and if the photograph was published as a color photograph, the photocopy must be a color photocopy;

(G) Slides, each containing up to 36 images; or

(H) A videotape clearly depicting each photograph.

(d) Special relief. (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation:

(i) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section;

(ii) Permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or

(iii) Permit the deposit of an actual copy or copies, in lieu of the identifying material otherwise required by this section; or

(iv) Permit the deposit of identifying material which does not comply with § 202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19(e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Associate Register for Registration Program of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit or registration made earlier under the grant of special relief.

(e) Use of copies and phonorecords deposited for the Library of Congress. Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application.

Editorial Note: For Federal Register citations affecting § 202.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov)

## **§ 202.21 Deposit of identifying material instead of copies.**

(a) General. Subject to the specific provisions of paragraphs (f) and (g) of this section, and to §§ 202.19(e)(1)(iv) and 202.20(d)(1)(iv), in any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations for published or unpublished works, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works,

such material should reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) Completeness; number of sets. As many pieces of identifying material as are necessary to show the entire copyrightable content in the ordinary case, but in no case less than an adequate representation of such content, of the work for which deposit is being made, or for which registration is being sought shall be submitted. Except in cases falling under the provisions of § 202.19(d)(2)(iii) or § 202.20(c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) Size. Photographic transparencies must be at least 35mm in size and, if such transparencies are 3×3 inches or less, must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. The Copyright Office prefers that transparencies larger than 3×3 inches be mounted in a way that facilitates their handling and preservation, and reserves the right to require such mounting in particular cases. All types of identifying material other than photographic transparencies must be not less than 3×3 inches and not more than 9×12 inches, but preferably 8×10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be large enough to show clearly the entire copyrightable content of the work.

(d) Title and dimensions. At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work; and the indication of an exact measurement of one or more dimensions of the work is preferred.

(e) Copyright notice. In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted. Such reproduction shall be no smaller than 3×3 inches and no larger than 9×12 inches, and shall show the exact appearance and content of the notice, and its specific position on the work.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy of the motion picture shall consist of:

- (1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and
- (2) Photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any.

The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material deposited under this paragraph (f).

(g)(1) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either:

- (i) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and description of the motion picture; or
- (ii) A set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture.



(2) In either case the “description” may be a continuity, a pressbook, or a synopsis but in all cases it must include:

- (i) The title or continuing title of the work, and the episode title, if any;
- (ii) The nature and general content of the program;
- (iii) The date when the work was first fixed and whether or not fixation was simultaneous with first transmission;
- (iv) The date of first transmission, if any;
- (v) The running time; and
- (vi) The credits appearing on the work, if any.

(3) The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material submitted under this paragraph (g).

(h) In the case where the deposit copy or copies of a motion picture cannot be viewed for examining purposes on equipment in the Registration Program of the Copyright Office, the “description” required by § 202.20(c)(2)(ii) of these regulations may be a continuity, a pressbook, a synopsis, or a final shooting script but in all cases must be sufficient to indicate the copyrightable material in the work and include

- (1) The continuing title of the work and the episode title, if any;
- (2) The nature and general content of the program and of its dialogue or narration, if any;
- (3) The running time; and
- (4) All credits appearing on the work including the copyright notice, if any.

The provisions of paragraphs (b), (c), and (d) of this section do not apply to identifying material submitted under this paragraph (h).

[51 FR 6409, Feb. 24, 1986, as amended at 73 FR 37839, July 2, 2008]

## **§ 202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.**

(a) General. This section prescribes rules pertaining to the acquisition of phonorecords and copies of unpublished audio and audiovisual transmission programs by the Library of Congress under section 407(e) of title 17 of the United States Code, as amended. It also prescribes rules pertaining to the use of such phonorecords and copies in the registration of claims to copyright, under section 408(b).

(b) Definitions. For purposes of this section:

(1) The terms copies, fixed, phonorecords, publication, and transmission program and their variant forms, have the meanings given to them in section 101 of title 17. The term network station has the meaning given it in section 111(f) of title 17. For the purpose of this section, the term transmission includes transmission via the Internet, cable, broadcasting, and satellite systems, and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent.

(2) Title 17 means title 17 of the United States Code, as amended.

(c) Recording of transmission programs. (1) Library of Congress employees, including Library of Congress contractors, acting under the general authority of the Librarian of Congress, may make a fixation of an unpublished audio or audiovisual transmission program directly from a transmission to the public in the United States, in accordance with subsections 407(e)(1) and (4) of title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress's acquisition policies in effect at the time of fixation. Specific notice of an intent to record a transmission program will ordinarily not be given. In general, the Library of Congress will seek to record a substantial portion of the television programming transmitted by noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will record selected programming transmitted by commercial television broadcast stations, both network and independent. The Library will also record a selected portion of the radio programming transmitted by commercial and noncommercial broadcast stations. Additionally, the Library will record a selected portion of unpublished Internet, cable and satellite programming transmitted to the public in the United States.

(2) Upon written request addressed to the Chief, Motion Picture, Broadcasting and Recorded Sound Division by a broadcast station or other owner of the right of transmission, the Library of Congress will inform the requestor whether a particular transmission program has been recorded by the Library.

(3) The Library of Congress will not knowingly record any unfixed or published transmission program under the recording authority of section 407(e) of title 17 of the United States Code.

(4) The Library of Congress is entitled under this paragraph (c) to presume that a radio program transmitted to the public in the United States has been fixed but not published at the time of transmission, and that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of title 47 of the United States Code has been fixed but not published.

(5) The presumption established by paragraph (c)(4) of this section may be overcome by written declaration and submission of appropriate documentary evidence to the Chief, Motion Picture, Broadcasting and Recorded Sound Division, either before or after recording of the particular transmission program by the Library of Congress. Such written submission shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement declaring either that the program was not fixed or that it was published at the time of transmission;

(iii) If it is declared that the program was published at the time of transmission, a brief statement of the facts of publication, including the date and place thereof, the method of publication, the name of the owner of the right of first publication, and whether the work was published in the United States; and

(iv) The actual handwritten signature of an officer or other duly authorized agent of the organization which transmitted the program in question.

(6) A declaration that the program was unfixed at the time of transmission shall be accepted by the Library of Congress, unless the Library can cite evidence to the contrary, and the copy or phonorecord will either be

(i) Erased; or

(ii) Retained, if requested by the owner of copyright or of any exclusive right, to satisfy the deposit provision of section 408 of title 17 of the United States Code.

(7) If it is declared that the program was published at the time of transmission, the Library of Congress is entitled under this section to retain the copy or phonorecord to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code.

(8) The Library of Congress shall maintain a list of the radio, cable, Internet and satellite transmission programs that the Library has recorded on the Motion Picture, Broadcasting and Recorded Sound Division Web site at <http://www.loc.gov/rr/record/> for audio transmission programs, or <http://www.loc.gov/rr/mopic/> for audiovisual transmission programs, and, in making fixations of such unpublished transmission programs, shall identify a program that the Library has recorded by including that transmission program on the list no later than fourteen days after such fixation has occurred. The Library of Congress in making fixations of unpublished television transmission programs transmitted by commercial broadcast stations shall not do so without notifying the transmitting organization or its agent that such activity is taking place. In the case of television network stations, the notification will be sent to the particular network. In the case of any other commercial television broadcasting station, the notification will be sent to the particular broadcast station that has transmitted, or will transmit, the program. Such notice shall, if possible, be given by the Library of Congress prior to the time of broadcast. In every case, the Library of Congress shall transmit such notice no later than fourteen days after such fixation has occurred. Such notice shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement asserting the Library of Congress' belief that the transmission program has been, or will be by the date of transmission, fixed and is unpublished, together with language converting the notice to a demand for deposit under section 407 (a) and (b) of title 17 of the United States Code, if the transmission program has been published in the United States.

(9) The notice required by paragraph (c)(8) of this section shall not cover more than one transmission program except that the notice may cover up to thirteen episodes of one title if such episodes are generally scheduled to be broadcast at the same time period on a regular basis, or may cover all the episodes comprising the title if they are scheduled to be broadcast within a period of not more than two months.

(d) Demands for deposit of a transmission program. (1) The Register of Copyrights may make a written demand upon the owner of the right of transmission in the United States to deposit a copy or phonorecord of a specific transmission program for the benefit of the Library of Congress under the authority of section 407(e)(2) of title 17 of the United States Code.

(2) The Register of Copyrights is entitled to presume, unless clear evidence to the contrary is proffered, that the transmitting organization is the owner of the United States transmission right.

(3) Notices of demand shall be in writing and shall contain:

(i) The identification, by title and time of broadcast, of the work in question;

(ii) An explanation of the optional forms of compliance, including transfer of ownership of a copy or phonorecord to the Library, lending a copy or phonorecord to the Library for

reproduction, or selling a copy or phonorecord to the Library at a price not to exceed the cost of reproducing and supplying the copy or phonorecord;

(iii) A ninety-day deadline by which time either compliance or a request for an extension of a request to adjust the scope of the demand or the method for fulfilling it shall have been received by the Register of Copyrights;

(iv) A brief description of the controls which are placed on the use of the copies or phonorecords;

(v) A statement concerning the Register's perception of the publication status of the program, together with language converting this demand to a demand for a deposit, under 17 U.S.C. 407, if the recipient takes the position that the work is published; and

(vi) A statement that a compliance copy, or in the case of an audio transmission program, a compliance phonorecord, must be made and retained if the notice is received prior to transmission.

(4) With respect to paragraph (d)(3)(ii) of this section, the sale of a copy or phonorecord in compliance with a demand of this nature shall be at a price not to exceed the cost to the Library of reproducing and supplying the copy or phonorecord. The notice of demand should therefore inform the recipient of that cost and set that cost, plus reasonable shipping charges, as the maximum price for such a sale.

(5) Copies and phonorecords transferred, lent, or sold under paragraph (d) of this section shall be of sound physical condition as described in Appendix A to this section.

(6) Special relief. In the case of any demand made under paragraph (d) of this section the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i) Extend the time period provided in subparagraph (d)(3)(iii);

(ii) Make adjustments in the scope of the demand; or

(iii) Make adjustments in the method of fulfilling the demand. Any decision as to whether to allow such extension or adjustments shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress and shall be made as reasonably warranted by the circumstances. Requests for special relief under paragraph (d) of this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of the right of transmission in the United States and shall set forth the specific reasons why the request should be granted.

(e) Disposition and use of copies and phonorecords . (1) All copies and phonorecords acquired under this section shall be maintained by the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress. The Library may make one archival copy or phonorecord of a program which it has fixed under the provisions of section 407(e)(1) of title 17 of the United States Code and paragraph (c) of this section.

(2) All copies and phonorecords acquired or made under this section, except copies and phonorecords of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the following restrictions concerning copying and access: in the case of television or other audiovisual transmission programs, copying and access are governed by Library of Congress Regulation 818-17, Policies Governing the Use and

Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress, or its successors; in the case of audio transmission programs, copying and access are governed by Library of Congress Regulation 818-18.1, Recorded Sound Listening and Duplication Services, or its successors. Transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are subject to the provisions of the “American Television and Radio Archives Act,” 2 U.S.C. 170, and such regulations as the Librarian of Congress shall prescribe.

(f) Registration of claims to copyright. (1) Copies and phonorecords fixed by the Library of Congress under the provisions of paragraph (c) of this section may be used as the deposit for copyright registration provided that:

(i) The application and fee, in a form acceptable for registration, is received by the Copyright Office not later than ninety days after transmission of the program, and

(ii) Correspondence received by the Copyright Office in the envelope containing the application and fee states that a fixation of the instant work was made by the Library of Congress and requests that the copy or phonorecord so fixed be used to satisfy the registration deposit provisions.

(2) Copies and phonorecords transferred, lent, or sold to the Library of Congress under the provisions of paragraph (d) of this section may be used as the deposit for copyright registration purposes only when the application and fee, in a form acceptable for registration, accompany, in the same container, the copy or phonorecord lent, transferred, or sold, and there is an explanation that the copy or phonorecord is intended to satisfy both the demand issued under section 407(e)(2) of title 17 of the United States Code and the registration deposit provisions.

(g) Agreements modifying the terms of this section. (1) The Library of Congress may, at its sole discretion, enter into an agreement whereby the provision of copies or phonorecords of unpublished audio or audiovisual transmission programs on terms different from those contained in this section is authorized.

(2) Any such agreement may be terminated without notice by the Library of Congress.

(17 U.S.C. 407, 408, 702)

[48 FR 37208, Aug. 17, 1983, as amended at 56 FR 7815, Feb. 26, 1991; 60 FR 34168, June 30, 1995; 64 FR 36575, July 7, 1999; 66 FR 34373, June 28, 2001; 69 FR 62411, Oct. 26, 2004]

## **§ 202.23 Full term retention of copyright deposits.**

(a) General. (1) This section prescribes conditions under which a request for full term retention, under the control of the Copyright Office, of copyright deposits (copies, phonorecords, or identifying material) of published works may be made and granted or denied pursuant to section 704(e) of title 17 of the United States Code. Only copies, phonorecords, or identifying material deposited in connection with registration of a claim to copyright under title 17 of the United States Code are within the provisions of this section. Only the depositor or the copyright owner of record of the work identified by the copyright deposit, or a duly authorized agent of the depositor or copyright owner, may request full term retention. A fee for this service is fixed by this section pursuant to section 708(a)(11) of title 17 of the United States Code.

(2) For purposes of this section, under the control of the Copyright Office shall mean within the confines of Copyright Office buildings and under the control of Copyright Office employees, including retention in a Federal records center, but does not include transfer to the Library of Congress collections.

(3) For purposes of this section, full term retention means retention for a period of 75 years from the date of publication of the work identified by the particular copyright deposit which is retained.

(4) For purposes of this section, copyright deposit or its plural means the copy, phonorecord, or identifying material submitted to the Copyright Office in connection with a published work that is subsequently registered and made part of the records of the Office.

(b) Form and content of request for full term retention —(1) Forms. The Copyright Office does not provide printed forms for the use of persons requesting full term retention of copyright deposits.

(2) Requests for full term retention must be made in writing addressed to the Chief, Information and Records Division of the Copyright Office, and shall (i) be signed by or on behalf of the depositor or copyright owner of record, and (ii) clearly indicate that full term retention is desired.

(3) The request for full term retention must adequately identify the particular copyright deposit to be retained, preferably by including the title used in the registration application, the name of the depositor or copyright owner of record, the publication date, and, if registration was completed earlier, the registration number.

(c) Conditions under which requests will be granted or denied —(1) General. A request that meets the requirements of paragraph (b) of this section will generally be granted if the copyright deposit for which full term retention is requested has been continuously in the custody of the Copyright Office and the Library of Congress has not, by the date of the request, selected the copyright deposit for its collections.

(2) Time of request. The request for full term retention of a particular copyright deposit may be made at the time of deposit or at any time thereafter; however, the request will be granted only if at least one copy, phonorecord, or set of identifying material is in the custody of the Copyright Office at the time of the request. Where the request is made concurrent with the initial deposit of the work for registration, the requestor must submit one copy or phonorecord more than the number specified in § 202.20 of for the particular work.

(3) One deposit retained. The Copyright Office will retain no more than one copy, phonorecord, or set of identifying material for a given registered work.

(4) Denial of request for full term retention. The Copyright Office reserves the right to deny the request for full term retention where:

(i) The excessive size, fragility, or weight of the deposit would, in the sole discretion of the Register of Copyrights, constitute an unreasonable storage burden. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit;

(ii) The Library of Congress has selected for its collections the single copyright deposit, or both, if two copies or phonorecords were deposited; or

(iii) Retention would result in a health or safety hazard, in the sole judgment of the Register of Copyrights. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit.

(d) Form of copyright deposit. If full term retention is granted, the Copyright Office will retain under its control the particular copyright deposit used to make registration for the work. Any deposit made on or after September 19, 1978, shall satisfy the requirements of §§ 202.20 and 202.21.

(e) Fee for full term retention. (1) Pursuant to section 708(a)(11) of title 17 of the United States Code, the Register of Copyrights has fixed the fee for full term retention, as prescribed in § 201.3(d), for each copyright deposit granted full term retention.

(2) A check or money order in the amount prescribed in § 201.3(d) payable to the Register of Copyrights, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full term retention has been granted for a particular copyright deposit.

(3) The Copyright Office will issue a receipt acknowledging payment of the fee and identifying the copyright deposit for which full term retention has been granted.

(f) Selection by Library of Congress —(1) General. All published copyright deposits are available for selection by the Library of Congress until the Copyright Office has formally granted a request for full term retention. Unless the requestor has deposited the additional copy or phonorecord specified by paragraph (c)(2) of this section, the Copyright Office will not process a request for full term retention submitted concurrent with a copyright registration application and deposit, until the Library of Congress has had a reasonable amount of time to make its selection determination.

(2) A request for full term retention made at the time of deposit of a published work does not affect the right of the Library to select one or both of the copyright deposits.

(3) If one copyright deposit is selected, the second deposit, if any, will be used for full term retention.

(4) If both copyright deposits are selected, or, in the case where the single deposit made is selected, full term retention will be granted only if the additional copy or phonorecord specified by paragraph (c)(2) was deposited.

(g) Termination of full term storage. Full term storage will cease 75 years after the date of publication of the work identified by the copyright deposit retained, and the copyright deposit will be disposed of in accordance with section 704, paragraphs (b) through (d), of title 17 of the United States Code.

[52 FR 28822, Aug. 4, 1987, as amended at 60 FR 34168, June 30, 1995; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999; 64 FR 36575, July 7, 1999; 65 FR 39819, June 28, 2000; 73 FR 37839, July 2, 2008]

## **§ 202.24 Deposit of published electronic works available only online.**

(a) Pursuant to authority under 17 U.S.C. 407(d), the Register of Copyrights may make written demand to deposit one complete copy or a phonorecord of an electronic work published in the United States and available only online upon the owner of copyright or of the exclusive right of publication in the work, under the following conditions:

(1) Demands may be made only for works in those categories identified in § 202.19(c)(5) of these regulations as being subject to demand.

(2) Demands may be made only for works published on or after February 24, 2010.

(3) The owner of copyright or of the exclusive right of publication must deposit the demanded work within three months of the date the demand notice is received.

(4) Copies or phonorecords deposited in response to a demand must be able to be accessed and reviewed by the Copyright Office, Library of Congress, and the Library's authorized users on an ongoing basis.

(b) Technical standards . Technical standards for the transmission of copies of online-only works to the Copyright Office in response to a demand will be available on the Copyright Office website ( [www.copyright.gov](http://www.copyright.gov) ).

(c) Definitions . (1) “Best edition” has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) “Complete copy” has the meaning set forth in § 202.19(b)(2) of these regulations.

(3) “Electronic works” are works fixed and published solely in an electronic format.

(d) Special relief . (1) In the case of any demand made under paragraph (a) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i) Extend the time period provided in section 407(d) of Title 17;

(ii) Permit the deposit of incomplete copies or phonorecords; or

(iii) Permit the deposit of copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

[75 FR 3869, Jan. 25, 2010]



## **Appendix A to Part 202—Technical Guidelines Regarding Sound Physical Condition**

To be considered a copy “of sound physical condition” within the meaning of 37 CFR 202.22(d)(5), a copy shall conform to all the technical guidelines set out in this Appendix.

A. Physical Condition . All portions of the copy that reproduce the transmission program must be:

1. Clean: Free from dirt, marks, spots, fungus, or other smudges, blotches, blemishes, or distortions;
2. Undamaged: Free from burns, blisters, tears, cuts, scratches, breaks, erasure, or other physical damage. The copies must also be free from:
  - (i) Any damage that interferes with performance from the tape or other reproduction, including physical damage resulting from earlier mechanical difficulties such as cassette jamming, breaks, tangles, or tape overflow; and
  - (ii) Any erasures, damage causing visual or audible defects or distortions or any material remaining from incomplete erasure of previously recorded works.
3. Unspliced: Free from splices in any part of the copy reproducing the transmission program, regardless of whether the splice involves the addition or deletion of material or is intended to repair a break or cut.
4. Undeteriorated: Free from any visual or aural deterioration resulting from aging or exposure to climatic, atmospheric, or other chemical or physical conditions, including heat, cold, humidity, electromagnetic fields, or radiation. The copy shall also be free from excessive brittleness or stretching, from any visible flaking of oxide from the tape base or other medium, and from other visible signs of physical deterioration or excessive wear.

B. Physical Appurtenances of Deposit Copy.

1. Physical Housing of Video Tape Copy. (a) In the case of video tape reproduced for reel-to-reel performance, the deposit copy shall consist of reels of uniform size and length. The length of the reels will depend on both the size of the tape and its running time (the last reel may be shorter). (b) In the case of video tape reproduced for cassette, cartridge, or similar performance, the tape drive mechanism shall be fully operable and free from any mechanical defects.
2. “Leader” or Equivalent . The copy, whether housed in reels, cassettes, or cartridges, shall have a leader segment both preceding the beginning and following the end of the recording.

C. Visual and Aural Quality of Copy:

1. Visual Quality. The copy should be equivalent to an evaluated first generation copy from an edited master tape and must reproduce a flawless and consistent electronic signal that meets industry standards for television screening.
2. Aural Quality. The sound channels or other portions must reproduce a flawless and consistent electronic signal without any audible defects.

(17 U.S.C. 407, 408, 702)

[48 FR 37209, Aug. 17, 1983, as amended at 60 FR 34168, June 30, 1995]

## **Appendix B to Part 202—“Best Edition” of Published Copyrighted Works for the Collections of the Library of Congress**

The copyright law (title 17, United States Code) requires that copies or phonorecords deposited in the Copyright Office be of the “best edition” of the work. The law states that “The ‘best edition’ of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.” (For works first published only in a country other than the United States, the law requires the deposit of the best edition as first published.)

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and “best edition” standards based on such differences do not apply. Each such version is a separate work for the purpose of the copyright law.

The criteria to be applied in determining the best edition of each of several types of material are listed below in descending order of importance. In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. Example: If a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper, and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial), by requesting “special relief” from the deposit requirements. All requests for special relief should be in writing and should state the reason(s) why the applicant cannot send the required deposit and what the applicant wishes to submit instead of the required deposit.

### **I. Printed Textual Matter**

#### **A. Paper, Binding, and Packaging:**

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.

8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued. In the case of looseleaf materials, this includes the submission of all binders and indexes when they are part of the unit as published and offered for sale or distribution. Additionally, the regular and timely receipt of all appropriate looseleaf updates, supplements, and releases including supplemental binders issued to handle these expanded versions, is part of the requirement to properly maintain these publications.

9. Slip-cased rather than nonslip-cased.

10. With protective folders rather than without (for broadsides).

11. Rolled rather than folded (for broadsides).

12. With protective coatings rather than without (except broadsides, which should not be coated).

B. Rarity:

1. Special limited edition having the greatest number of special features.

2. Other limited edition rather than trade edition.

3. Special binding rather than trade binding.

C. Illustrations:

1. Illustrated rather than unillustrated.

2. Illustrations in color rather than black and white.

D. Special Features:

1. With thumb notches or index tabs rather than without.

2. With aids to use such as overlays and magnifiers rather than without.

E. Size:

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

## **II. Photographs**

A. Size and finish, in descending order of preference:

1. The most widely distributed edition.

2. 8×10-inch glossy print.

3. Other size or finish.

B. Unmounted rather than mounted.

C. Archival-quality rather than less-permanent paper stock or printing process.

## **III. Motion Pictures**

Film medium is considered a better quality than any other medium. The formats under “film” and “video formats” are listed in descending order of preference:

A. Film

1. Preprint material, by special arrangement

2. 70 mm positive print, if original production negative is greater than 35 mm
3. 35 mm positive prints
4. 16 mm positive prints

#### B. Video Formats

1. Betacam SP
2. Digital Beta (Digibeta)
3. DVD
4. VHS Cassette

### **IV. Other Graphic Matter**

#### A. Paper and Printing:

1. Archival quality rather than less-permanent paper.
2. Color rather than black and white.

#### B. Size and Content:

1. Larger rather than smaller size.
2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.

#### C. Rarity:

1. The most widely distributed edition rather than one of limited distribution.
2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.
3. A photographic reproduction of the original, by special arrangement only.

#### D. Text and Other Materials:

1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.

#### E. Binding and Packaging:

1. Bound rather than unbound.
2. If editions have different binding, apply the criteria in I.A.2-I.A.7, above.
3. Rolled rather than folded.
4. With protective coatings rather than without.

### **V. Phonorecords**

- A. Compact digital disc rather than a vinyl disc.
- B. Vinyl disc rather than tape.
- C. With special enclosures rather than without.
- D. Open-reel rather than cartridge.

- E. Cartridge rather than cassette.
- F. Quadraphonic rather than stereophonic.
- G. True stereophonic rather than monaural.
- H. Monaural rather than electronically rechanneled stereo.

## **VI. Musical Compositions**

### A. Fullness of Score:

#### 1. Vocal music:

##### a. With orchestral accompaniment—

i. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

ii. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).

#### 2. Instrumental music:

a. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

b. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

### B. Printing and Paper:

1. Archival-quality rather than less-permanent paper.

### C. Binding and Packaging:

1. Special limited editions rather than trade editions.

2. Bound rather than unbound.

3. If editions have different binding, apply the criteria in I.A.2-I.A.12, above.

4. With protective folders rather than without.

## **VII. Microforms**

### A. Related Materials:

1. With indexes, study guides, or other printed matter rather than without.

### B. Permanence and Appearance:

1. Silver halide rather than any other emulsion.

2. Positive rather than negative.

3. Color rather than black and white.
- C. Format (newspapers and newspaper-formatted serials):
  1. Reel microfilm rather than any other microform.
- D. Format (all other materials):
  1. Microfiche rather than reel microfilm.
  2. Reel microfilm rather than microform cassettes.
  3. Microfilm cassettes rather than micro-opaque prints.
- E. Size:
  1. 35 mm rather than 16 mm.

## **VIII. Machine-Readable Copies**

### **A. Computer Programs**

1. With documents and other accompanying material rather than without.
2. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
3. Format:
  - a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):
    - (i) 5 1/4 " Diskette(s).
    - (ii) 3 1/2 " Diskette(s).
    - (iii) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.
  - b. Apple Macintosh:
    - (i) 3 1/2 " Diskette(s).
    - (ii) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

### **B. Computerized Information Works, Including Statistical Compendia, Serials, or Reference Works:**

1. With documentation and other accompanying material rather than without.
2. With best edition of accompanying program rather than without.
3. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
4. Format
  - a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):
    - (i) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.
    - (ii) 5 1/4 " Diskette(s).
    - (iii) 3 1/2 " Diskette(s).
  - b. Apple Macintosh:
    - (i) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

(ii) 3 1/2 " Diskette(s).

## **IX. Electronic Works Published in the United States and Available Only Online**

For all deposits, UTF-8 encoding is preferred to ASCII encoding and other non UTF-8 encodings for non-Latin character sets in all categories below.

### **A. Electronic Serials**

#### **1. Content Format**

a. Level 1: Serials-specific structured/markup format:

(i) Content compliant with the NLM Journal Archiving (XML) Document Type Definition (DTD), with presentation stylesheet(s), rather than without.

(ii) Other widely used serials or journal XML DTDs/schemas, with presentation stylesheet(s), rather than without.

(iii) Proprietary XML format for serials or journals (with documentation), with DTD/schema and presentation stylesheet(s), rather than without.

b. Level 2: Page-oriented rendition:

(i) PDF/A (Portable Document Format/Archival; compliant with ISO 19005).

(ii) PDF (Portable Document Format, with searchable text, rather than without).

c. Level 3: Other formats:

(i) XHTML/HTML, as made available online, with presentation stylesheets(s), rather than without.

(ii) XML (widely used, publicly documented XML-based word-processing formats, e.g., ODF/OpenDocument Format, Office OpenXML), with presentation stylesheets(s), if appropriate, rather than without.

(iii) Plain text.

(iv) Other formats (e.g., proprietary word processing or page layout formats).

#### **2. Metadata Elements:**

If it has already been gathered and is available, descriptive data (metadata) as described below should accompany the deposited material.

a. Title level metadata: serial or journal title, ISSN, publisher, frequency, place of publication.

b. Article level metadata, as relevant/applicable: volume(s), number(s), issue dates(s), article title(s), article author(s), article identifier (DOI, etc.).

c. With other descriptive metadata (e.g., subject heading(s), descriptor(s), abstract(s)), rather than without.

3. Technological measures that control access to or use of the work should be removed.

## **X. Works Existing in More Than One Medium**

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:

1. Microform.
2. Printed matter.

B. All other materials:

1. Printed matter.
2. Microform.
3. Phonorecord.

[54 FR 42299, Oct. 16, 1989, as amended at 62 FR 51603, Oct. 2, 1997; 69 FR 8822, Feb. 26, 2004; 75 FR 3869, Jan. 25, 2010]

## **PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES**

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Authority: 17 U.S.C 702; 5 U.S.C 552, as amended.

Source: 43 FR 774, Jan. 4, 1978, unless otherwise noted.

### **Organization**

#### **§ 203.1 General.**

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, United States Code, as amended.

[43 FR 774, Jan. 4, 1978, as amended at 66 FR 34373, June 28, 2001]



## **§ 203.2 Authority and functions.**

(a) The administration of the copyright law was entrusted to the Library of Congress by an act of Congress in 1870, and the Copyright Office has been a separate department of the Library since 1897. The statutory functions of the Copyright Office are contained in and carried out in accordance with the Copyright Act. Pub. L. 94-553 (90 Stat. 2541-2602), 17 U.S.C. 101-1101.

[43 FR 774, Jan. 4, 1978, as amended at 62 FR 35421, July 1, 1997]

## **§ 203.3 Organization.**

(a) In general. The Office of the Register exercises overall direction of the work of the Copyright Office, including work in conjunction with copyright legislation, litigation and promulgation of copyright regulations. The Office of the Register of Copyrights includes the legal, administrative, and automation staff.

(b) The Copyright Office Chief of Operations has oversight of the operating divisions of the Copyright Office. The operating divisions are:

(1) The Receipt, Analysis and Control Division, which receives incoming materials, dispatches outgoing materials and establishes control over fiscal accounts.

(2) The Registration Program which examines all applications and material presented to the Copyright Office for registration of original and renewal copyright claims, and which determines whether the material deposited constitutes copyrightable subject matter and whether the other legal and formal requirements of title 17 have been met.

(3) The Registration Program, which prepares the bibliographic description of all copyrighted works registered in the Copyright Office, including the recording of legal facts of copyright pertaining to each work, in an on-line database in which copyright records can be searched; and which also examines and catalogs in an on-line database documents submitted for recordation.

(4) The Information and Records Division, which provides a national copyright information service through the Copyright Information Section, educates the public on the copyright law, issues and distributes information materials, responds to reference requests regarding copyright matters, prepares search reports based upon copyright records, certifies copies of legal documents concerned with copyright, and maintains liaison with the United States Customs Service, the Department of the Treasury, and the United States Postal Service on certain matters. The Information and Records Division also develops, services, stores, and preserves the official records and catalogs of the Copyright Office, including applications for registration, historical records, and materials deposited for copyright registration that are not selected by the Library of Congress for addition to its collections.

(5) The Licensing Division, which implements the sections of the Copyright Act dealing with secondary transmissions of radio and television programs, compulsory licenses for making and distributing phonorecords of nondramatic musical, pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. The Licensing Division is in charge of collecting the statutory royalties and distributing these royalties based on either a voluntary agreement among the interested parties or a determination of the Copyright Royalty Board.

(c) The Copyright General Counsel is a principal legal officer of the Office. The General Counsel has overall supervisory responsibility for the legal staff and primary responsibility for providing liaison on legal matters between the Office and the Congress, the Department of Justice and other agencies of Government, the courts, the legal community, and a wide range of interests affected by the copyright law. The Copyright General Counsel has responsibility for overseeing all functions related to the administration of the compulsory licenses including oversight of the Copyright Royalty Board.

(d) The Associate Register of Copyrights for International Affairs and Policy is a principal legal adviser to the Register with primary responsibility for the international aspects of copyright protection, as well as legislative and policy matters.

(e) The Office has no field organization.

(f) The Office is located in The James Madison Memorial Building of the Library of Congress, 1st and Independence Avenue, SE, Washington, DC. 20559-6000. The Public Information Office is located in Room LM-401. Its hours are 8:30 a.m. to 5 p.m., Monday through Friday except legal holidays. The phone number of the Public Information Office is (202) 707-3000. Informational material regarding the copyright law, the registration process, fees, and related information about the Copyright Office and its functions may be obtained free of charge from the Public Information Office upon request.

(g) All Copyright Office forms may be obtained free of charge from the Public Information Office or by calling the Copyright Office Hotline anytime day or night at (202) 707-9100.

(h) The Copyright Office maintains an “electronic reading room” by making available certain documents and records on its World Wide Web page and by providing access to documents that affect the public in electronic format pursuant to 5 USC 552(a)(2). Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including registration information and recorded documents, are available on the Internet. Frequently requested Copyright Office circulars, announcements, and recently proposed as well as final regulations are available on-line. The address for the Copyright Office's home page is: <http://www.loc.gov/copyright>; information may also be accessed by connecting to the Library of Congress' home page on the World Wide Web. The address is: <http://www.loc.gov>. Other Copyright Office documents may be provided on disk when so requested.

[60 FR 34168, June 30, 1995, as amended at 62 FR 55742, Oct. 28, 1997; 64 FR 36575, July 7, 1999; 65 FR 39819, June 28, 2000; 66 FR 34373, June 28, 2001; 73 FR 37839, July 2, 2008; 76 FR 27898, May 13, 2011]

## **Procedures**

### **§ 203.4 Methods of operation.**

(a) In accordance with section 552(a)(2) of the Freedom of Information Act, the Copyright Office makes available for public inspection and copying records of copyright registrations and of final refusals to register claims to copyright; statements of policy and interpretations which

have been adopted but are not published in the Federal Register; and administrative staff manuals and instructions to the staff that affect a member of the public.

(b) The Copyright Office also maintains and makes available for public inspection and copying current indexes providing identifying information as to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552(a)(2). The Copyright Office has determined that publication of these indexes is unnecessary and impractical. Copies of the indexes will be provided to any member of the public upon request at the cost of reproduction.

(c) The material and indexes referred to in paragraphs (a) and (b) of this section are available for public inspection and copying at the Public Information Office of the Copyright Office, Room LM-401, The James Madison Memorial Building of the Library of Congress, 1st and Independence Avenue, SE, Washington, DC, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except legal holidays.

(d) The Supervisory Copyright Information Specialist is responsible for responding to all initial requests submitted under the Freedom of Information Act. Individuals desiring to obtain access to Copyright Office information under the Act should make a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559-6000, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE, Washington, DC. If a request is made by mail, both the request and the envelope containing it should be plainly marked Freedom of Information Act Request. Failure to so mark a mailed request may delay the Office response.

(e) Records must be reasonably described. A request reasonably describes records if it enables the Office to identify the records requested by any process that is not unreasonably burdensome or disruptive of Office operations. The Supervisory Copyright Information Specialist will, upon request, aid members of the public to formulate their requests in such a manner as to enable the Office to respond effectively and reduce search costs for the requester.

(f) The Office will respond to all properly marked mailed requests and all personally delivered written requests for records within twenty (20) working days of receipt by the Supervisory Copyright Information Specialist. Inquiries should be mailed to: Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024. If hand delivered, materials should go to: Copyright Public Information Office, LM 401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. If it is determined that an extension of time greater than ten (10) working days is necessary to respond to a request due to unusual circumstances, as defined in paragraph (i) of this section, the Supervisory Copyright Information Specialist shall so notify the requester and give the requester the opportunity to:

(1) Limit the scope of the request so that it may be processed within twenty (20) working days, or

(2) Arrange with the Office an alternative time frame for processing the request or a modified request. If a request is denied, the written notification will include the basis for the denial, names of all individuals who participated in the determination, and procedures available to appeal the determination. If a requester wishes to appeal a denial of some or all of his or her request for information, he or she must make an appeal in writing within 30 calendar days of the date of the

Office's denial. The request should be directed to the General Counsel of the United States Copyright Office at: Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. The appeal should be clearly labeled 'Freedom of Information Act Appeal'.

(g) The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the General Counsel or his or her delegate within 20 working days. If, on appeal, the denial is in whole or in part upheld, the written determination will include the basis for the appeal denial and will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(h) In unusual circumstances, the General Counsel may extend the time limits prescribed in paragraphs (f) and (g) of this section for not more than 10 working days. The extension period may be split between the initial request and the appeal but the total period of extension shall not exceed 10 working days. Extensions will be by written notice to the person making the request. The Copyright Office will advise the requester of the reasons for the extension and the date the determination is expected. As used in this paragraph "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are physically separate from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Copyright Office which have a substantial subject matter interest therein.

(i) The Supervisory Copyright Information Specialist will consider requests for expedited processing of requests in cases where the requester demonstrates a compelling need for such processing. The term "compelling need" means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a "compelling need" exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief. The Office will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) days of receipt of the request. If a request for expedited processing is approved, documents responsive to the request will be processed as soon as is practicable. Denials of requests for expedited processing may be appealed to the Office of the General Counsel.

[43 FR 774, Jan. 4, 1978, as amended at 47 FR 36820, Aug. 24, 1982; 62 FR 55742, Oct. 28, 1997; 63 FR 1927, Jan 13, 1998; 64 FR 36575, July 7, 1999; 65 FR 39819, June 28, 2000; 66 FR 34373, June 28, 2001; 73 FR 37839, July 2, 2008]

## **Availability of Information**

### **§ 203.5 Inspection and copying.**

(a) When a request for information has been approved, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Supervisory Copyright Information Specialist at the address or telephone number listed in § 203.4(d). Such material may be copied manually without charge, and reasonable facilities are available in the Public Information Office for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in paragraphs (a) and (b) of § 203.6.

## **Charges for Search for Reproduction**

### **§ 203.6 Schedule of fees and methods of payment for services rendered.**

(a) General. The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act of 1976, title 17 of the United States Code (Pub. L. 94-553) requires a fee to be charged. The fees required to be charged are contained in § 201.3 of this chapter, or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. If the Copyright Office receives a request for copies or other services involving the public records or indexes of the Office or for copies of deposited articles for which a fee is required to be charged, the Office will notify the requester of the procedure established to obtain the copies or services and the amount of the chargeable fees. Fees pursuant to title 5 U.S.C., section 552 for all other services not involving the public records of the Copyright Office will be assessed according to the schedule in paragraph (b) of this section. All fees so assessed shall be charged to the requester, except where the charge is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requests by record subjects asking for copies of records about themselves shall be processed under the Privacy Act fee schedule found in 37 CFR 204.6.

(b) FOIA requests . In responding to requests under this part the following fees shall be assessed, unless a waiver or reduction in fees has been granted pursuant to paragraph (d) of this section:

(1) For copies of certificates of copyright registration, \$25.

(2) For copies of all other Copyright Office records not otherwise provided for in this section a minimum fee of \$15.00 for up to 15 pages and \$.50 per page over 15.

(3) For each hour or fraction of an hour spent in searching for a requested record, \$65, except that no search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Fees may be assessed for time spent searching even if the search fails to locate any

responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(4) For the issuance of any certification, \$65 for each hour or fraction of an hour consumed in respect thereto.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost of the Office.

(6) For computer searches of records, which may be undertaken through the use of existing programming, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no less than \$65 per hour or fraction thereof).

(7) No review fees will be charged for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may be withheld.

(c) Fee limitations. The following limitations on fees shall apply:

(1) Except for requesters seeking records for commercial use the following will be provided without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(2) No fees will be charged for ordinary packaging and mailing costs.

(d) Waiver or reduction of fees. (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Office determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Office shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.”

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosures: Whether disclosure of the requested information will contribute to “public understanding.”

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) Notice of anticipated fees in excess of \$25.00. Where the Office determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than \$25.00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Copyright Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) Aggregation of requests. Where the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly.

(g) Advance payments. (1) Where the Office estimates that a total fee to be assessed under this section is likely to exceed \$250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Office may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (g)(2) of this section, the Office shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(h) Charging interest. The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component of the Office, even if not processed, the accrual of interest shall be

stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of billing.

[53 FR 8456, Mar. 15, 1988, as amended at 56 FR 59885, Nov. 26, 1991; 62 FR 55742, Oct. 28, 1997; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999; 66 FR 34373, June 28, 2001]

## **PART 204—PRIVACY ACT: POLICIES AND PROCEDURES**

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Authority: 17 U.S.C. 702; 5 U.S.C. 552(a).

Source: 43 FR 776, Jan. 4, 1978, unless otherwise noted.

### **§ 204.1 Purposes and scope.**

The purposes of these regulations are:

- (a) The establishment of procedures by which an individual can determine if the Copyright Office maintains a system of records in which there is a record pertaining to the individual; and
- (b) The establishment of procedures by which an individual may gain access to a record or information maintained on that individual and have such record or information disclosed for the purpose of review, copying, correction, or amendment.

### **§ 204.2 Definitions.**

For purposes of this part:

- (a) The term individual means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (b) The term maintain includes maintain, collect, use, or disseminate;
- (c) The term record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history, and that contains his or her



name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(d) The term system of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual; and

(e) The term routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

### **§ 204.3 General policy.**

The Copyright Office serves primarily as an office of public record. Section 705 of title 17, United States Code, requires the Copyright Office to open for public inspection all records of copyright deposits, registrations, recordings, and other actions taken under title 17. Therefore, a routine use of all Copyright Office systems of records created under section 705 of title 17 is disclosure to the public. All Copyright Office systems of records created under section 705 of title 17 are also available for public copying as required by section 706(a), with the exception of copyright deposits, whose reproduction is governed by section 706(b) and the regulations issued under that section. In addition to the records mandated by section 705 of title 17, the Copyright Office maintains other systems of records which are necessary for the Office effectively to carry out its mission. These systems of records are routinely consulted and otherwise used by Copyright Office employees in the performance of their duties. The Copyright Office will not sell, rent, or otherwise make publicly available any mailing list prepared by the Office.

[47 FR 36821, Aug. 24, 1982]

### **§ 204.4 Procedure for notification of the existence of records pertaining to individuals.**

(a) The Copyright Office will publish in the Federal Register, upon the establishment or revision of the system of records, notices of all Copyright Office systems of records subject to the Privacy Act, as provided by 5 U.S.C., section 552a(e)(4). Individuals desiring to know if a Copyright Office system of records contains a record pertaining to them should submit a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Copyright Information Section, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE, Washington, DC.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the Federal Register. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests made by individuals wishing to gain access to view or copy their records or any information pertaining to the individual, within a

reasonable time. The Office will acknowledge in writing an individual's request to amend a record pertaining to him or her within ten business days.

(d) Since all Copyright Office Records created under section 705 of title 17 are open to public inspection, no identity verification is necessary for individuals who wish to know whether a system of records created under section 705 pertains to them.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 50 FR 697, Aug. 14, 1985; 60 FR 34169, June 30, 1995; 64 FR 36575, July 7, 1999; 65 FR 39820, June 28, 2000; 73 FR 37839, July 2, 2008]

## **§ 204.5 Procedures for requesting access to records.**

(a) Individuals desiring to obtain access to Copyright Office information pertaining to them in a system of records other than those created under section 705 of title 17 should make a written request, signed by themselves or their duly authorized agent, to that effect either by mail to the Supervisory Copyright Information Specialist, Copyright Information Section, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE, Washington, DC.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the Federal Register. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within 20 working days of receipt; and will notify the requester within 30 working days of receipt when and where access to the record will be granted. If the individual requested a copy of the record, the copy will accompany such notification.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 60 FR 34169, June 30, 1995; 64 FR 36575, July 7, 1999; 65 FR 39820, June 28, 2000; 73 FR 37839, July 2, 2008]

## **§ 204.6 Fees.**

(a) The Copyright Office will provide, free of charge, one copy to an individual of any record pertaining to that individual contained in a Copyright Office system of records, except where the request is for a copy of a record for which a specific fee is required and identified in § 201.3 of this chapter, in which case that fee shall be charged. For additional copies of records not covered by section 708 the fee will be a minimum of \$15.00 for up to 15 pages and \$.50 per page over 15. The Office will require prepayment of fees estimated to exceed \$25.00 and will remit any excess paid or bill an additional amount according to the differences between the final fee charged and the amount prepaid. When prepayment is required, a request is not deemed "received" until prepayment has been made.

(b) The Copyright Office may waive the fee requirement whenever it determines that such waiver would be in the public interest.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 56 FR 59886, Nov. 26, 1991; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999]

## **§ 204.7 Request for correction or amendment of records.**

(a) Any individual may request the correction or amendment of a record pertaining to her or him. With respect to an error in a copyright registration, the procedure for correction and fee chargeable is governed by section 408(d) of title 17 of the United States Code, and the regulations issued as authorized by that section. With respect to an error in any other record, the request shall be in writing and delivered either by mail addressed to the Supervisory Copyright Information Specialist, Copyright Information Section, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays, at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE, Washington, DC. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to an error in a copyright registration, the time limit for Office response to requests for correction is governed by section 408(d) of Pub. L. 94-553, and the regulations issued as authorized by that section. With respect to other requests for correction or amendment of records, the Office will respond within ten working days indicating to the requester that the requested correction or amendment has been made or that it has been refused. If the requested correction or amendment is refused, the Office response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 60 FR 34169, June 30, 1995; 64 FR 36575, July 7, 1999; 65 FR 39820, June 28, 2000; 73 FR 37839, July 2, 2008]

## **§ 204.8 Appeal of refusal to correct or amend an individual's record.**

(a) An individual who disagrees with a refusal of the Copyright Office to amend his or her record may request a review of the denial. The decision will be made within 30 business days, unless the Office can demonstrate good cause for extending the 30 day period. If the requestor is dissatisfied with the agency's final determination, the individual may bring a civil action against the Office in the appropriate United States district court. appeal the refusal to correct or amend a record pertaining to the individual. The individual should submit a written appeal to the General Counsel, Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Appeals, and the envelopes containing them, should be plainly marked "Privacy Act Appeal." Failure to so mark the appeal may delay the Copyright Office General Counsel's response. An appeal should contain a copy of the request for amendment or correction and a copy of the record alleged to be untimely, inaccurate, incomplete or irrelevant.

(b) The General Counsel will issue a written decision granting or denying the appeal within 30 working days after receipt of the appeal unless, after showing good cause, the General Counsel extends the 30 day period. If the appeal is granted, the requested amendment or correction will be made promptly. If the appeal is denied, in whole or part, the General Counsel's decision will set forth reasons for the denial. Additionally, the decision will advise the requester that he or she

has the right to file with the Copyright Office a concise statement of his or her reasons for disagreeing with the refusal to amend the record and that such statement will be attached to the requester's record and included in any future disclosure of such record.

[43 FR 776, Jan. 4, 1978, as amended at 64 FR 36575, July 7, 1999; 65 FR 39820, June 28, 2000; 65 FR 48914, Aug. 10, 2000; 66 FR 34373, June 28, 2001; 73 FR 37840, July 2, 2008]

## **§ 204.9 Judicial review.**

Within two years of the receipt of a final adverse administrative determination, an individual may seek judicial review of that determination as provided in 5 U.S.C. 552a(g)(1).

### PART 205—LEGAL PROCESSES

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##### Subpart A—General Provisions

- § 205.1 Definitions.
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- § 205.3 Waiver of rules.
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##### Subpart B—Service of Process

- § 205.11 Scope and purpose.
- § 205.12 Process served on the Register of Copyrights or an employee in his or her official capacity.
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##### Subpart C—Testimony By Employees and Production of Documents in Legal Proceedings in Which the Office Is Not a Party

- § 205.21 Scope and purpose.
  - § 205.22 Production of documents and testimony.
  - § 205.23 Scope of testimony.
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Authority: 17 U.S.C. 702.

Source: 69 FR 39334, June 30, 2004, unless otherwise noted.

## Subpart A—General Provisions

### § 205.1 Definitions.

For the purpose of this part:

Demand means an order, subpoena or any other request for documents or testimony for use in a legal proceeding.

Document means any record or paper held by the Copyright Office, including, without limitation, official letters, deposits, recordations, registrations, publications, or other material submitted in connection with a claim for registration of a copyrighted work.

Employee means any current or former officer or employee of the Copyright Office, as well as any individual subject to the jurisdiction, supervision, or control of the Copyright Office.

General Counsel, unless otherwise specified, means the General Counsel of the Copyright Office or his or her designee.

Legal proceeding means any pretrial, trial, and post trial stages of existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings. This phrase also includes state court proceedings (including grand jury proceedings) and any other state or local legislative and administrative proceedings.

Office means the Copyright Office, including any division, section, or operating unit within the Copyright Office.

Official business means the authorized business of the Copyright Office.

Testimony means a statement in any form, including a personal appearance before a court or other legal tribunal, an interview, a deposition, an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746, a telephonic, televised, or videotaped statement or any response given during discovery or similar proceeding, which response would involve more than the production of documents, including a declaration under 35 U.S.C. 25 or a declaration under penalty of perjury pursuant to 28 U.S.C. 1746.

United States means the Federal Government, its departments and agencies, individuals acting on behalf of the Federal Government, and parties to the extent they are represented by the United States.

§ 205.2 Address for mail and service; telephone number.

(a) Mail under this part should be addressed to the General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024-0400.

(b) Service by hand shall be made upon an authorized person from 8:30 a.m. to 5 p.m., Monday through Friday in the Copyright Information Section, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC. Persons authorized to accept service of process are the General Counsel of the Copyright Office and his or her designees.

(c) The Office of the General Counsel may be reached by telephone during normal business hours specified in paragraph (b) of this section at 202-707-8380.

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008]

### § 205.3 Waiver of rules.

In extraordinary situations, when the interest of justice requires, the General Counsel may waive or suspend the rules of this part, sua sponte or on petition of an interested party, subject to such requirements as the General Counsel may impose on the parties. However, the inclusion of certain legal processes within the scope of these rules, e.g., state legal proceedings, does not represent a waiver of any claim of immunity, privilege, or other defense by the Office in a legal proceeding, including but not limited to, sovereign immunity, preemption, or lack of relevance. This rule does not create any right or benefit, substantive or procedural, enforceable at law by a party against the Copyright Office, the Library of Congress, or the United States.

### § 205.4 Relationship of this part to the Federal Rules of Civil and Criminal Procedure.

Nothing in this part waives any requirement under the Federal Rules of Civil or Criminal Procedure.

### § 205.5 Scope of this part related to Copyright Office duties under title 17 of the U.S. Code.

This part relates only to legal proceedings, process, requests and demands relating to the Copyright Office's performance of its duties pursuant to title 17 of the United States Code. Legal proceedings, process, requests and demands relating to other matters (e.g., personal injuries, employment matters, etc.) are the responsibility of the General Counsel of the Library of Congress and are governed by 36 CFR part 703.

## Subpart B—Service of Process

§ 205.11 Scope and purpose.

(a) This subpart provides the procedures governing service of process on the Copyright Office and its employees in their official capacity. These regulations provide the identity of Copyright Office officials who are authorized to accept service of process. The purpose of this subpart is to provide a centralized location for receipt of service of process to the Office. Such centralization will provide timely notification of legal process and expedite Office response. Litigants also must comply with all requirements pertaining to service of process that are established by statute, court rule and rule of procedure including the applicable provisions of the Federal Rules of Civil Procedure governing service upon the United States.

(b) This subpart does not apply to service of process made on an employee personally for matters not related to official business of the Office. Process served upon a Copyright Office employee in his or her individual capacity must be served in compliance with the applicable requirements for service of process established by statute, court rule, or rule of procedure.

§ 205.12 Process served on the Register of Copyrights or an employee in his or her official capacity.

(a) Summonses, complaints and all other process directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity should be served on the General Counsel of the Copyright Office or his or her designee as indicated in § 205.2 of this part. To effect proper service, the requirements of Rule 4(i) of the Federal Rules of Civil Procedure must also be satisfied by effecting service on both the United States Attorney for the district in which the action is brought and the Attorney General, Attn: Director of Intellectual Property Staff, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(b) If, notwithstanding paragraph (a) of this section, any employee of the Office is served with a summons or complaint in connection with the conduct of official business, that employee shall immediately notify and deliver the summons or complaint to the Office of the General Counsel of the Copyright Office.

(c) Any employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and mode of service.



(d) The Office will accept service of process for an employee only when the legal proceeding is brought in connection with the conduct of official business carried out in the employee's official capacity.

(e) When a legal proceeding is brought to hold an employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the employee is to be served in accordance with any applicable statute, court rule, or rule of procedure. Service of process in this case is inadequate when made only on the General Counsel. An employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the General Counsel of the Copyright Office.

§ 205.13 Complaints served on the Register of Copyrights pursuant to 17 U.S.C. 411(a).

When an action has been instituted pursuant to 17 U.S.C. 411(a) for infringement of the copyright of a work for which registration has been refused, notice of the institution of the action and a copy of the complaint must be served on the Register of Copyrights by sending such documents by registered or certified mail to the General Counsel of the Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024-0400, or delivery by hand addressed to the General Counsel of the Copyright Office and delivered to the Copyright Information Section, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC. The notice must be in the form of a letter that is clearly identified as a 411(a) notice. Both the letter and the envelope should state: "Section 411(a) Notice to the Register of Copyrights." In compliance with Fed. R. Civ. P. Sec. 4(i), a notice of the institution of the action and a copy of the complaint must also be served on both the United States Attorney for the district in which the action is brought and the United States Department of Justice, directed to the Attorney General, Attn: Director of Intellectual Property Staff, Civil Division, Department of Justice, Washington, DC 20530.

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008]

Subpart C—Testimony By Employees and Production of Documents in Legal Proceedings in Which the Office Is Not a Party

§ 205.21 Scope and purpose.

(a) This subpart prescribes policies and procedures of the Copyright Office governing testimony, in legal proceedings in which the Office is not a party, by Office employees in their official

capacities and the production of Office documents for use in legal proceedings pursuant to a demand, request, subpoena or order.

(b) The purpose of this subpart is:

(1) To conserve the time of Office employees for conducting official business;

(2) To minimize the possibility of involving the Office in the matters of private parties or other issues which are not related to the mission of the Office;

(3) To prevent the public from confusing personal opinions of Office employees with Office policy;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process, minimize disruption of the decision-making process, and prevent interference with the Office's administrative functions.

(c) An employee of the Office may not voluntarily appear as a witness or voluntarily testify in a legal proceeding relating to his or her official capacity without proper authorization under this subpart.

(d) This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is asked to testify as an expert on a matter in which that employee did not personally participate while at the Office so long as the former employee testifies concerning his or her personal opinion and does not purport to speak for or on behalf of the Copyright Office.

#### § 205.22 Production of documents and testimony.

(a) Generally, all documents and material submitted to the Copyright Office as part of an application to register a claim to copyright are available for public inspection and copying. It is possible, therefore, to obtain those materials without use of a legal process. Anyone seeking such

documents must contact the Records Research and Certification Section of the Office. 37 CFR 201.2(b)(1). Certified copies of public documents and public records are self-authenticating. FED. R. EVID. 902 and 1005; see also , FED. R. CIV. p. 44(a)(1). In certain specified circumstances, information contained in the in-process files may be obtained by complying with the procedures of 37 CFR 201.2(b)(3). Correspondence between a copyright claimant or his or her agent and the Copyright Office in a completed registration, recordation, or refusal to register is also available for public inspection. Section 201.2(d) of this chapter prescribes the method for requesting copies of copyright registration records. An attorney engaged in actual or prospective litigation who submits a court order or a completed Litigation Statement may obtain a copy of the deposit if his or her request is found to comply with the requirements set out in 37 CFR 201.2(d)(2). The fees associated with various document requests, searches, copies, and expedited handling are listed in 37 CFR 201.3. Other publications containing Copyright Office procedures and practices are available to the public without charge from the Copyright Office or its Web site: <http://www.copyright.gov>. The Office website also allows online searching of copyright registration information and information pertaining to documents recorded with the Copyright Office beginning January 1, 1978. Pre-1978 copyright registration information and document recordation information is available to the public in the Copyright Office during regular business hours. If the information sought to be obtained from the Office is not available through these Office services, demands and subpoenas for testimony or documents may be served as follows:

(1) Demands for testimony or documents. All demands, requests, subpoenas or orders for production of documents or testimony in a legal proceeding directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity must be in writing and should be served on the General Counsel of the Copyright Office as indicated in § 205.2 of this part and in accordance with the Federal Rules of Civil or Criminal Procedure.

(2) Affidavits. Except when the Copyright Office is a party to the legal proceeding, every demand, request or subpoena shall be accompanied by an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746. Such affidavit or declaration shall contain a written statement setting forth the title of the legal proceeding; the forum; the requesting party's interest in the legal proceeding; the reasons for the demand, request, or subpoena; a showing that the desired testimony or document is not reasonably available from any published or other written source, (e.g., 37 CFR, Chapter II; Compendium II, Compendium of Copyright Office Practices; other written practices of the Office; circulars; the Copyright Office website) and is not available by other established procedure, e.g., 37 CFR 201.2, 201.3. If testimony is requested in the affidavit or declaration, it shall include the intended use of the testimony, a detailed summary of the testimony desired, and a showing that no document could be provided and used in lieu of the requested testimony. The purpose of these requirements is to permit the Copyright General Counsel to make an informed decision as to whether testimony or production of a document should be authorized. The decision by the General Counsel will be based on consideration of the purposes set forth in § 205.21(b) of this part, on the evaluation of the requesting party's need for the testimony and any other factor warranted by the circumstances. Typically, when the information requested is available through other existing Office procedures or materials, the General Counsel will not authorize production of documents or testimony.

(b) No Copyright Office employee shall give testimony concerning the official business of the Office or produce any document in a legal proceeding other than those made available by the Records Research and Certification Section under existing regulations without the prior authorization of the General Counsel. Without prior approval from the General Counsel, no Office employee shall answer inquiries from a person not employed by the Library of Congress or the Department of Justice regarding testimony or documents in connection with a demand, subpoena or order. All inquiries involving demands, subpoenas, or orders shall be directed to the Copyright General Counsel.

(c) Any Office employee who receives a demand, request, subpoena or order for testimony or the production of documents in a legal proceeding shall immediately notify the Copyright Office General Counsel at the phone number indicated in § 205.2 of this part and shall immediately forward the demand to the Copyright General Counsel.

(d) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand, request or subpoena to address interests or concerns of the Office. Failure of the attorney or party to cooperate in good faith under this part may serve as the basis for the General Counsel to deny authorization for the testimony or production of documents sought in the demand.

(e) A determination under this part regarding authorization to respond to a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance. The Copyright Office reserves the right to oppose any demand on any appropriate legal ground independent of any determination under this part, including but not limited to, sovereign immunity, preemption, privilege, lack of relevance, or technical deficiency.

(f) Office procedures when an employee receives a demand or subpoena:

(1) If the General Counsel has not acted by the return date, the employee must appear at the time and place set forth in the subpoena (unless otherwise advised by the General Counsel) and inform the court (or other legal authority) that the demand has been referred for the prompt consideration of the General Counsel and shall request the court (or other legal authority) to stay the demand pending receipt of the requested instructions.

(2) If the General Counsel makes a determination not to authorize testimony or the production of documents, but the subpoena is not withdrawn or modified and Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena unless advised otherwise by the General Counsel. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony or to produce the requested document. If a court (or other legal authority) rules that the demand in the

subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008]

§ 205.23 Scope of testimony.

(a)(1) If a Copyright Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert testimony, or opinion, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an Office employee is authorized to testify in connection with his or her involvement or assistance in a proceeding or matter before the Office, that employee is further prohibited from giving testimony in response to an inquiry about the bases, reasons, mental processes, analyses, or conclusions of that employee in the performance of his or her official functions.

(2) The General Counsel may authorize an employee to appear and give expert testimony or opinion testimony upon the showing, pursuant to § 205.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Copyright Office or the United States.

(b) If an Office employee is authorized to testify, the employee will generally be prohibited from providing testimony in response to questions which seek, for example:

(1) To elicit information about the employee's:

(i) Qualifications to examine or otherwise consider a particular copyright application.

(ii) Usual practice or whether the employee followed a procedure set out in any Office manual of practice in a particular case.

(iii) Consultation with another Office employee.

(iv) Familiarity with:

(A) Preexisting works that are similar.

(B) Registered works, works sought to be registered, a copyright application, registration, denial of registration, or request for reconsideration.

(C) Copyright law or other law.

(D) The actions of another Office employee.

(v) Reliance on particular facts or arguments.

(2) To inquire into the manner in and extent to which the employee considered or studied material in performing the function.

(3) To inquire into the bases, reasons, mental processes, analyses, or conclusions of that Office employee in performing the function.

(4) In exceptional circumstances, the General Counsel may waive these limitations pursuant to § 205.3 of this part.

#### § 211.1 General provisions.

(a) Mail and other communications with the Copyright Office concerning the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620, chapter 9 of title 17 U.S.C., shall be addressed to: Library of Congress, Department MW, Washington, DC 20540.

(b) Section 201.2 of this chapter relating to the information given by the Copyright Office, and parts 203 and 204 of this chapter pertaining to the Freedom of Information Act and Privacy Act, shall apply, where appropriate, to the administration by the Copyright Office of the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620.

(c) For purposes of this part, the terms semiconductor chip product, mask work, fixed, commercially exploited, and owner, shall have the meanings set forth in section 901 of title 17 U.S.C.

§ 211.2 Recordation of documents pertaining to mask works.

The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to mask works under section 903 of title 17 U.S.C.

[50 FR 26719, June 28, 1985, as amended at 66 FR 34373, June 28, 2001]

§ 211.3 Mask work fees.

(a) Section 201.3 of this chapter prescribes the fees or charges established by the Register of Copyrights for services relating to mask works.

(b) Section 201.6 of this chapter on the payment and refund of Copyright Office fees shall apply to mask work fees.

[50 FR 26719, June 28, 1985, as amended at 56 FR 59886, Nov. 26, 1991; 59 FR 38372, July 28, 1994; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999]

§ 211.4 Registration of claims of protection in mask works.

(a) General. This section prescribes conditions for the registration of claims of protection in mask works pursuant to section 908 of title 17 U.S.C.

(b) Application for registration. (1) For purposes of registration of mask work claims, the Register of Copyrights has designated “Form MW” to be used for all applications submitted on and after January 7, 1985. Copies of the form are available free upon request to the Copyright Information Office, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Applications submitted before January 7, 1985 will be dated January 7, 1985.

(2) An application for registration of a mask work claim may be submitted by the owner of the mask work, or the duly authorized agent of any such owner.

(i) The owner of a mask work includes a party that has obtained the transfer of all of the exclusive rights in the work, but does not include the transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights.

(ii) For purposes of eligibility to claim mask work protection pursuant to section 902(a)(1)(A) of 17 U.S.C., the owner of the mask work must be either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Act.

(3) An application for registration shall be submitted on Form MW prescribed by the Register under paragraph (b)(1) of this section, and shall be accompanied by the registration fee and deposit required under 17 U.S.C. 908 and §§ 211.3 and 211.5 of these regulations. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(i) A declaration that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge; and

(ii) The handwritten signature of the applicant, accompanied by the typed or printed name of that person.

(c) One registration per mask work. (1) Subject to the exception specified in paragraph (c)(2) of this section, only one registration can generally be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(2) Notwithstanding the general rule permitting only one registration per work, owners of mask works in final forms of semiconductor chip products that are produced by adding metal-connection layers to unpersonalized gate arrays may separately register the entire unpersonalized gate array and the custom metallization layers. Applicants seeking to register separately entire unpersonalized gate arrays or custom metallization layers should make the nature of their claim clear at Space 8 of application Form MW. For these purposes, an "unpersonalized gate array" is an intermediate form chip product that includes a plurality of circuit elements that are adaptable to be personalized into a plurality of different final form chip products, in which some of the circuit elements are, or will be, connected as gates.



(d) Registration as a single work. Subject to the exception specified in paragraph (c)(2) of this section, for purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single work.

(1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and

(2) In the case of a mask work that has been commercially exploited. All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask is or are the same.

(e) Registration in most complete form. Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 of Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession. For applicants seeking to register an unpersonalized gate array or custom metallization layers under paragraph (c)(2) of this section, the most complete form is the entire chip on which the unpersonalized gate array or custom metallization layers reside(s), and registration covers those elements of the chip in which work protection is asserted.

(f) Corrections and amplifications of prior registration. Except for errors or omissions made by the Copyright Office, no corrections or amplifications can be made to the information contained in the record of a completed registration after the effective date of the registration. A document purporting to correct or amplify the information in a completed registration may be recorded in the Copyright Office for whatever effect a court of competent jurisdiction may later give to it, if the document is signed by the owner of the mask work, as identified in the registration record, or by a duly authorized agent of the owner.

[50 FR 26719, June 28, 1985, as amended at 56 FR 7818, Feb. 26, 1991; 64 FR 36575, July 7, 1999; 66 FR 34374, June 28, 2001; 73 FR 37840, July 2, 2008]

§ 211.5 Deposit of identifying material.

(a) General . This section prescribes rules pertaining to the deposit of identifying material for registration of a claim of protection in a mask work under section 908 of title 17 U.S.C.

(b) Nature of required deposit. Subject to the provisions of paragraph (c) of this section, the deposit of identifying material to accompany an application for registration of a mask work claim under § 211.4 of these regulations shall consist of:

(1) In the case of a commercially exploited mask work, four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited. Defective chips may be deposited under this section provided that the mask work contribution would be revealed in reverse dissection of the chips. The four reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of:

(i) Sets of plastic color overlay sheets;

(ii) Drawings or plots in composite form on a single sheet or on separate sheets; or

(iii) A photograph of each layer of the work fixed in a semiconductor chip product.

The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8 1/2 × 11 inch format, and shall be reproduced at a magnification sufficient to reveal the basic circuitry design of the mask work and which shall in all cases be at least 20 times magnification.

(2) In the case of a mask work that has not been commercially exploited, one of the following:

(i) Where the mask work contribution in which registration is sought represents twenty percent or more of the area of the intended final form, a visually perceptible representation of the work in accordance with paragraph (b)(1) (i) or (ii) of this section. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor product.

(ii) Where the mask work contribution in which registration is sought represents less than twenty percent of the area of the intended final form, a visually perceptible representation of the work which reveals the totality of the mask work contribution to a person trained in the state of the art. The visually perceptible representations may consist of any combination of plastic color overlay sheets, drawing or plots in composite form, or a photograph or photographs of the entire mask set. If the visually perceptible representation fails to identify all of the elements of the mask work contribution, they may be accompanied by additional explanatory material. The visually

perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8 1/2 × 11 inch format and shall be of sufficient magnification and completeness to reveal all elements of the mask work contribution. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor chip product.

(c) Trade secret protection . Where specific layers of a mask work fixed in a semiconductor chip product contain information in which trade secret protection is asserted, certain material may be withheld as follows:

(1) Mask works commercially exploited . For commercially exploited mask works no more than two layers of each five or more layers in the work. In lieu of the visually perceptible representations required under paragraph (b)(1) of this section, identifying portions of the withheld material must be submitted. For these purposes, identifying portions shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or (ii) visually perceptible representations in accordance with paragraph (b)(1) (i), (ii), or (iii) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out.

(2) Mask work not commercially exploited. For mask works not commercially exploited falling under paragraph (b)(2)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(2) of this section, “identifying portions” shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, in which sensitive information maintained under a claim of trade secrecy has been blocked out or stripped, or (ii) visually perceptible representations in accordance with paragraph (b)(2)(i) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out. The identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product in which the sensitive information maintained under a claim of trade secrecy has been blocked out, provided that the blocked out portions do not exceed the remaining portions.

(d) Special relief . The Register of Copyrights may decide to grant special relief from the deposit requirements of this section, and shall determine the conditions under which special relief is to be granted., Requests for special relief under this paragraph shall be made in writing to the Associate Register for Registration Program, Library of Congress, Copyright Office - RPO, 101 Independence Avenue, SE, Washington, DC 20559-6200, shall be signed by the person signing the application for registration, shall set forth specific reasons why the request should be granted and shall propose an alternative form of deposit.

(e) Retention and disposition of deposits. (1) Any identifying material deposited under this section, including material deposited in connection with claims that have been refused registration, are the property of the United States Government.

(2) Where a claim of protection in a mask work is registered in the Copyright Office, the identifying material deposited in connection with the claim shall be retained under the control of the Copyright Office, including retention in Government storage facilities, during the period of protection. After that period, it is within the joint discretion of the Register of Copyrights and the Librarian of Congress to order its destruction or other disposition.

[50 FR 26719, June 28, 1985, as amended at 60 FR 34169, June 30, 1995; 73 FR 37840, July 2, 2008; 76 FR 27898, May 13, 2011]

#### § 211.6 Methods of affixation and placement of mask work notice.

(a) General. (1) This section specifies methods of affixation and placement of the mask work notice that will satisfy the notice requirement in section 909 of title 17 U.S.C. A notice deemed “acceptable” under this regulation shall be considered to satisfy the requirement of that section that it be affixed “in such manner and location as to give reasonable notice” of protection. As provided in that section, the examples specified in this regulation shall not be considered exhaustive of the methods of affixation and positions giving reasonable notice of the claim of protection in a mask work.

(2) The acceptability of a mask work notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination.

(b) Elements of mask work notice. The elements of a mask work notice shall consist of:

(1) The words mask work , the symbol “M” or the symbol “&om;” (the letter M in a circle); and

(2) The name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(c) Methods of affixation and placement of the notice. In the case of a mask work fixed in a semiconductor chip product, the following locations are acceptable:

(1) A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle for the product; or

(2) A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.

[50 FR 26719, June 28, 1985, as amended at 60 FR 34169, June 30, 1995]

§ 211.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register mask works under 17 U.S.C. chapter 9, unless otherwise required by this part.

[69 FR 77637, Dec. 28, 2004]

## **§ 212.1 Scope.**

The provisions of this part apply to the protection and registration of original designs of vessel hulls under chapter 13 of title 17, United States Code. Design protection and registration under this part are separate from copyright protection and registration. Copyright registration is governed by the provisions of part 202 of this subchapter.

## **§ 212.2 Fees.**

Services related to registration of original designs of vessel hulls are subject to fees prescribed in §§ 201.3(c) and (d).

[71 FR 31092, June 1, 2006]

## **§ 212.3 Registration of claims for protection of eligible designs.**

(a) Limitations. Protection is not available for, and an application for registration will not be accepted for:

(1) An otherwise eligible design made public prior to October 28, 1998;

(2) An otherwise eligible design made public on a date more than two years prior to the filing of an application for registration under this section;

(3) A design ineligible for any of the reasons set forth in 17 U.S.C. 1302.

(b) Required elements of application. An application is considered filed with the Copyright Office on the date on which the following three items have been received by the Copyright Office:

- (1) Completed Form D-VH;
- (2) Deposit material identifying the design or designs for which registration is sought; and
- (3) The appropriate fee.

(c) Application by owner of design. An application for registration under this section may be made only by the owner or owners of the design, or by the duly authorized agent or representative of the owner or owners of the design.

(d) Application form. Registration must be made on Form D-VH. Forms are available from the Copyright Office and may be reprinted from the Copyright Office's website (<http://www.loc.gov/copyright/forms/formdvh.pdf>).

(e) Deposit material —(1) In General . Identification of the design to be registered may be made in the form of drawings or photographs. No more than two drawings or photographs of the design may appear on a single sheet. Applicants may submit up to three 8 1/2"×11" sheets containing drawings or photographs as part of the basic application fee. An additional fee shall be assessed for each page beyond the first three pages. No combinations of drawings and photographs may be submitted on a single sheet. The drawings or photographs that accompany the application must reveal those aspects of the design for which protection is claimed. The registration extends only to those aspects of the design which are adequately shown in the drawings or photographs.

(2) Views. The drawings or photographs submitted should contain a sufficient number of views to make an adequate disclosure of the appearance of the design, i.e. , front, rear, right and left sides, top and bottom. While not required, it is suggested that perspective views be submitted to show clearly the appearance and shape of the three dimensional designs.

(3) Drawings. (i) Drawings must be in black ink on white 8 1/2 "×11" unruled paper. A drawing of a design should include appropriate surface shading which shows clearly the character and contour of all surfaces of any 3-dimensional aspects of the design. Surface shading is also necessary to distinguish between any open and solid areas of the design. Solid black surface shading is not permitted except when used to represent the black color as well as color contrast.

(ii) The use of broken lines in drawings depicting the design is understood to be for illustrative purposes only and forms no part of the claimed design. Structure that is not part of the design, but that is considered necessary to show the environment in which the design is used, may be represented in the drawing by broken lines. This includes any portion of the vessel hull in which the design is embodied or applied that is not considered part of the design. When the claimed design is only surface ornamentation to the vessel hull, the vessel hull in which it is embodied must be shown in broken lines.

(iii) When broken lines are used, they should not intrude upon or cross the depiction of the design and should not be of heavier weight than the lines used in depicting the design. Where a broken line showing of environmental structure must necessarily cross or intrude upon the representation of the design and obscure a clear understanding of the design, such an illustration should be included as a separate figure, in addition to other figures which fully disclose the subject matter of the design.

(4) Photographs. High quality black and white or color photographs will be accepted provided that they are mounted on plain white 8 1/2 "×11" unlined paper and do not exceed two photographs per sheet. Photographs must be developed on double weight photographic paper and must be of sufficient quality so that all the details of the design are plainly visible and are capable of reproduction on the registration certificate, if issued.

(f) Multiple claims —(1) In general. Claims for more than one design may be filed in one of two ways. If multiple designs are contained on a single make and model of a vessel hull (and therefore, the information in Space 1 of Form D-VH—the make and model of the vessel that embodies the design—is the same for each of the designs), a single application form may be used for all designs, provided that the information in spaces 3 through 9 is the same for each of the designs. If multiple designs are contained on more than one make and model of a vessel, or the information in spaces 3 through 9 is not the same for each of the multiple designs, then separate applications must be used for each design.

(2) Single application. Where a single application for multiple designs is appropriate, a separate Form D-VH/CON must be used for each design beyond the first appearing on Form D-VH. Each Form D-VH/CON must be accompanied by deposit material identifying the design that is the subject of the Form D-VH/CON, and the deposit material must be attached to the Form D-VH/CON. The Form D-VH and all the Form D-VH/CONs for the single application must be submitted together.

(3) Multiple applications. Where multiple applications for more than one design are required, a Form D-VH must be completed for each design. Deposit material identifying the design must accompany each application. Multiple applications may be filed separately.

(4) Fees . The basic application fee prescribed in § 201.3(c) of this chapter applies to each design submitted, regardless of whether a single application or multiple applications are used.

(g) Written declaration. In lieu of the oath required by 17 U.S.C. 1312(a), the application shall contain a written declaration, as permitted by 17 U.S.C. 1312(b), signed by the applicant, or the applicant's duly authorized agent or representative. If the design has been made public with the design notice prescribed in 17 U.S.C. 1306, the written declaration shall also describe the exact form and position of the design notice. The written declaration shall read as follows:

The undersigned, as the applicant or the applicant's duly appointed agent or representative, being hereby warned that willful false statements are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this application or any resulting registration, hereby declares to the best of his/her knowledge and belief:

- (1) That the design has been fixed in a useful article;
- (2) That the design is original and was created by the designer(s), or employer if applicable, named in the application;
- (3) That those aspects of the design for which registration is sought are not protected by a design patent;
- (4) That the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and

(5) That the applicant is the person entitled to protection and to registration under chapter 13 of title 17, United States Code.

(h) Priority claims. An applicant seeking the benefit of 17 U.S.C. 1311 because the applicant has, within the previous 6 months, filed an application for protection of the same design in a foreign country, must provide:

(1) Identification of the filing date of the foreign application;

(2) Identification of the foreign country in which the application was filed;

(3) The serial number or any other identifying number of the foreign application;

(4) A certified copy of the foreign application;

(5) A translation of the foreign application and a statement, signed by the translator, that the translation is accurate, if the foreign application is in a language other than English; and

(6) If requested by the Copyright Office, proof that the foreign country in which the prior application was filed extends to designs of owners who are citizens of the United States, or to applications filed under chapter 13 of title 17, United States Code, similar protection to that provided under chapter 13 of title 17, United States Code.

(i) Effective date of registration. The effective date of registration is the date of publication of the registration by the Copyright Office.

(j) Publication of registration. Publication of registrations of vessel hull designs shall be made on the Copyright Office website ( <http://www.loc.gov/copyright/vessels> ).

[64 FR 36578, July 7, 1999, as amended by 72 FR 33692, June 19, 2007]

## **§ 212.4 Affixation and placement of design notice.**

(a) General. (1) This section specifies the methods of affixation and placement of the design notice required by 17 U.S.C. 1306. Sections 1306 and 1307 govern the circumstances under which a design notice must be used and the effect of omission of a design notice. A notice deemed acceptable under this part shall be considered to satisfy the requirements of section 1306 that it be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce. As provided in that section, the examples specified in this part shall not be considered exhaustive of the methods of affixation and locations giving reasonable notice of the claim of protection in the design.

(2) The acceptability of a design notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such a manner and position that, when affixed, it may be viewed upon reasonable examination. There is no requirement that a design notice be permanently embossed or engraved into a vessel hull or deck, but it should be affixed in such a manner that, under normal conditions of use, it is not likely to become unattached or illegible.

(b) Elements of a design notice. If the design has been registered, the registration number may be included in the design notice in place of the year of the date on which protection for the design commenced and the name of the owner, an abbreviation by which the name can be recognized,



or a generally accepted alternative designation of the owner. The elements of a design notice shall consist of:

- (1) The words “Protected Design”, the abbreviation “Prot'd Des.”, or the letter “D” within a circle, or the symbol \*D\*;
  - (2) The year of the date on which protection for the design commenced; and
  - (3) The name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.
- (c) Distinctive identification. Any distinctive identification of an owner may be used for purposes of paragraph (b)(3) of this section if it has been recorded by the Register of Copyrights pursuant to § 212.5 before the design marked with such identification is registered.
- (d) Acceptable locations of notice. The following are acceptable means of affixing and placement of a design notice:
- (1) In close proximity to the hull identification number required by 33 CFR 181.23;
  - (2) In close proximity to the driver's console such that it is in plain view from the console;
  - (3) If the vessel is twenty feet in length or less and is governed by 33 CFR 183.21, in close proximity to the capacity marking; and
  - (4) In close proximity to the make and/or model designation of the vessel.

## **§ 212.5 Recordation of distinctive identification of vessel hull designer.**

- (a) General. Any owner of a vessel hull may record a distinctive identification with the Register of Copyrights for purposes of using such distinctive identification in a design protection notice required by 17 U.S.C. 1306. A distinctive identification of an owner may not be used in a design notice before it has first been recorded with the Register.
- (b) Forms. The Copyright Office does not provide forms for the use of persons recording distinctive identifications of ownership of a vessel hull. However, persons recording distinctive identifications are encouraged to use the suggested format available on the Copyright Office website ( <http://www.loc.gov/copyright/vessels> ).
- (c) Recording distinctive identifications. Any distinctive identification of an owner of a vessel hull may be recorded with the Register of Copyrights provided that a document containing the following is submitted:
- (1) The name and address of the owner;
  - (2) A statement of the owner that he/she is entitled to use the distinctive identification;
  - (3) A statement or depiction of the identification; and
  - (4) The recordation fee in the amount prescribed in § 201.3(c) of this chapter.
- (d) The document should be mailed to: Dept. D-VH, Vessel Hull Registration, P.O. Box 71380, Washington, DC 20024-1380.

[64 FR 36578, July 7, 1999, as amended at 67 FR 38005, May 31, 2002; 72 FR 33692, June 19, 2007]

## **§ 212.6 Recordation of transfers and other documents.**

The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to design protection of vessel hulls under 17 U.S.C. chapter 13.

## **§ 212.7 Reconsideration procedure for refusals to register.**

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register vessel hull designs under 17 U.S.C. chapter 13, unless otherwise required by this part.

[69 FR 77637, Dec. 28, 2004]

## **§ 212.8 Correction of errors in certificates of registration.**

(a) General. (1) This section prescribes conditions relating to the correction of clerical or typographical errors in a certificate of registration of a vessel hull design, under section 1319 of title 17 of the United States Code, as amended by Public Law 105-304.

(2) For the purposes of this section, a basic registration means registration of a vessel hull design made under sections 1310 through 1314 of title 17 of the United States Code, as amended by Public Law 105-304.

(3) No correction of the information in a basic registration will be made except pursuant to the provisions of this § 212.8. As an exception, where it is discovered that the record of a vessel hull design registration contains a clerical or typographical error made by the Copyright Office, the Office will take appropriate measures to rectify its error. Correction will be made only of clerical or typographical errors; errors of a different nature cannot be corrected and there is no procedure to amplify the registration record with additional information.

(b) Application for correction of error in certificate. At any time after registration of a vessel hull design, the Copyright Office will correct a clerical or typographical error in the registration upon the application of the owner of the registered design or the owner's authorized agent.

(c) Form and content of application to correct registration. (1) An application to correct a registration shall be made on a form prescribed by the Copyright Office, shall be accompanied by the appropriate filing fee identified in § 201.3(c) and shall contain the following information:

(i) The make and model of the vessel that embodies the registered design;

(ii) The registration number of the basic registration;

(iii) The year when the basic registration was completed;

(iv) The name or names of the designer or designers of the vessel hull, and the owner or owners of the vessel hull design, as they appear in the basic registration;

- (v) The space number and heading or description of the part of the basic registration where the error occurred;
- (vi) A transcription of the erroneous information as it appears in the basic registration;
- (vii) A statement of the correct information as it should have appeared;
- (viii) If desired, an explanation of the error or its correction;
- (ix) The name and address:
  - (A) To which the correspondence concerning the application should be sent; and
  - (B) To which the certificate of correction should be mailed; and
- (x) The certification shall consist of:
  - (A) The handwritten signature of the owner of the registered design or of the duly authorized agent of such owner (who shall also be identified);
  - (B) The typed or printed name of the person whose signature appears, and the date of signature; and
  - (C) A statement that the person signing the application is the owner of the registered design or of the duly authorized agent of such owner, and that the statements made in the application are correct to the best of that person's knowledge.
- (2) The form prescribed by the Copyright Office for the foregoing purposes is designated "Application to Correct a Design Registration (Form DC)". Copies of the form are available free upon request to the Public Information Office, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000 or on the Copyright Office Web site at <http://www.copyright.gov/forms/formdc.pdf>.
- (3) Copies, phonorecords or supporting documents cannot be made part of the record of a corrected certificate of registration and should not be submitted with the application.
- (d) Fee. The filing fee for an application to correct a certificate of registration of a vessel hull design is prescribed in § 201.3(c).

[71 FR 46402, Aug. 14, 2006]

## **§ 253.1 General.**

This part 253 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2003, and ending on December 31, 2007. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

[57 FR 60954, Dec. 22, 1992. Redesignated at 59 FR 23993, May 9, 1994, as amended at 63 FR 2144, Jan 14, 1998; 67 FR 77171, Dec. 17, 2002]

## § 253.2 Definition of public broadcasting entity.

As used in this part, the term public broadcasting entity means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d)(2).

## § 253.3 [Reserved]

## § 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements.

(a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:	
2003-2007	\$224.22
(2) For performance of such a work as background or theme music in a PBS program:	
2003-2007	\$56.81
(3) For performance of such a work in a feature presentation of a station of PBS:	
2003-2007	\$19.16
(4) For performance of such a work as background or theme music in a program of a station of PBS:	
2003-2007	\$4.04
(5) For the performance of such a work in a feature presentation of NPR:	
2003-2007	\$22.73
(6) For the performance of such a work as background or theme music in an NPR program:	
2003-2007	\$5.51
(7) For the performance of such a work in a feature presentation of a station of NPR:	

2003-2007	\$1.61
(8) For the performance of such a work as background or theme music in a program of a station of NPR:	
2003-2007	\$.57
(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.	
(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.	

(b) Payment of royalty rate. The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) Records of use. PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP or BMI covering the license period January 1, 2003, to December 31, 2007, to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) Terms of use. The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of four years following the first performance.

[57 FR 60954, Dec. 22, 1992. Redesignated and amended at 59 FR 23993, May 9, 1994, and amended at 63 FR 2144, Jan 14, 1998; 67 FR 77171, Dec. 17, 2002]

## **§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

(a) Scope. This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) Voluntary license agreements. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of

copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, \$277 annually.

(2) For all such compositions in the repertory of BMI, \$277 annually.

(3) For all such compositions in the repertory of SESAC, \$90 annually.

(4) For the performance of any other such compositions: \$1.

(d) Payment of royalty rate. The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) Records of use. A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

[57 FR 60954, Dec. 22, 1992, as amended at 58 FR 63294, Dec. 1, 1993; 60 FR 61655, Dec. 1, 1995; 61 FR 60613, Nov. 29, 1996; 63 FR 2145, Jan. 14, 1998; 63 FR 66042, Dec. 1, 1998; 64 FR 67188, Dec. 1, 1999; 65 FR 75167, Dec. 1, 2000; 66 FR 59699, Nov. 30, 2001; 67 FR 71105, Nov. 29, 2002; 67 FR 77171, Dec. 17, 2002; 68 FR 67045, Dec. 1, 2003; 69 FR 69823, Dec. 1, 2004; 70 FR 72077, Dec. 1, 2005; 71 FR 69486, Dec. 1, 2006]

## **§ 253.6 Performance of musical compositions by other public broadcasting entities.**

(a) Scope. This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) Voluntary license agreements. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 2003, \$460; in 2004, \$475; in 2005, \$495; in 2006, \$515; in 2007, \$535.

(2) For all such compositions in the repertory of BMI, in 2003, \$460; in 2004, \$475; in 2005, \$495; in 2006, \$515; in 2007, \$535.

(3) For all such compositions in the repertory of SESAC, in 2003, \$98; in 2004, \$100; in 2005, \$102; in 2006, \$104; in 2007, \$106.

(4) For the performance of any other such compositions, in 2003 through 2007, \$1.

(d) Payment of royalty rate. The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) Records of use. A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 5 stations to furnish such reports.

[57 FR 60954, Dec. 22, 1992. Redesignated at 59 FR 23993, May 9, 1994, and amended at 60 FR 8198, Feb. 13, 1995; 63 FR 2145, Jan. 14, 1998; 67 FR 77172, Dec. 17, 2002]

## § 253.7 Recording rights, rates and terms.

(a) Scope . This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) Royalty rate. (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2003-2007
Feature	\$112.40
Concert feature (per minute)	33.75
Background	56.81
Theme:	
Single program or first series program	56.81
Other series program	23.06

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2003-2007
Feature	\$9.29

Concert feature (per minute)	2.44
Background	4.04
Theme:	
Single program or first series program	4.04
Other series program	1.61

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	<b>2003-2007</b>
Feature	\$12.17
Concert feature (per minute)	17.86
Background	6.10
Theme:	
Single program or first series program	6.10
Other series program	2.43

(3) For purposes of this schedule, a “Concert Feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	<b>2003-2007</b>
Feature	\$.78
Feature (concert)(per half hour)	1.63
Background	.39



(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

(c) Payment of royalty rates. The required royalty rates shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) Records of use. (1) Maintenance of cue sheets. PBS and its stations, NPR, or other television public broadcasting entities shall maintain and make available for examination pursuant to subsection (e) copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) Filing of use reports with the Copyright Office. Deposit of cue sheets or summaries. PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Office copies of their standard music cue sheets or summaries of same (which may be in the form of hard copy of computerized reports) listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Office upon its request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

[57 FR 60954, Dec. 22, 1992; 58 FR 7051, Feb. 4, 1993; 58 FR 8820, Feb. 17, 1993, as amended at 63 FR 2145, Jan. 14, 1998; 63 FR 30635, 30636, June 5, 1998; 67 FR 77172, Dec. 17, 2002]

## **§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.**

(a) Scope. This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) Royalty rate. (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	<b>2003 - 2007</b>
(A) For featured display of a work	\$68. 67
(B) For background and montage display	33.4 9
(C) For use of a work for program identification or for thematic use	135. 37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	44.4 7

(ii) For such uses in other than PBS-distributed programs:

	<b>2003 - 2007</b>
(A) For featured display of a work	\$44. 47
(B) For background and montage display	22.8 0
(C) For use of a work for a program identification or for thematic use	90.9 1
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	22.8 0

For the purposes of this schedule the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other

than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) “Featured display” for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a “background or montage display”.

(3) “Thematic use” is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(4) “Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced” means a transparency or other reproduction of an underlying work of fine art.

(c) Payment of royalty rate. PBS or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) Records of use. (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) Filing of use reports with the Copyright Office. (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Office copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) Terms of use. (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118 (f), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

[58 FR 60954, Dec. 22, 1992; 58 FR 7051, Feb. 4, 1993. Redesignated and amended at 59 FR 23993, May 9, 1994; 63 FR 2145, Jan. 14, 1998; 64 FR 36576, July 7, 1999; 67 FR 77172, Dec. 17, 2002]

### **§ 253.9 Unknown copyright owners.**

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Office, upon request, information concerning fees deposited in trust funds.

[57 FR 60954, Dec. 22, 1992. Redesignated and amended at 59 FR 23993, May 9, 1994]

### **§ 253.10 Cost of living adjustment.**

(a) (a) On December 1, 2003, the Librarian of Congress shall publish in the Federal Register a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. On each December 1 thereafter the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Librarian of Congress shall publish in the Federal Register a revised schedule of rates for § 253.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 253.5 shall become effective thirty days after publication in the Federal Register .

[57 FR 60954, Dec. 22, 1992. Redesignated and amended at 59 FR 23993, May 9, 1994; 59 FR 63042, Dec. 7, 1994; 63 FR 2145, Jan. 14, 1998; 67 FR 77173, Dec. 17, 2002]

## **§ 253.11 Notice of restrictions on use of reproductions of transmission programs.**

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

## **§ 254.1 General.**

This part 254 establishes the compulsory license fees for coin-operated phonorecord players beginning on January 1, 1982, in accordance with the provisions of 17 U.S.C. 116.

[45 FR 890, Jan. 5, 1981. Redesignated and amended at 59 FR 23993, May 9, 1994]

## **§ 254.2 Definition of coin-operated phonorecord player.**

As used in this part, the term coin-operated phonorecord player is a machine or device that:

- (a) Is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;
- (b) Is located in an establishment making no direct or indirect charge for admission;
- (c) Is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and
- (d) Affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

[60 FR 8198, Feb. 13, 1995]

## **§ 254.3 Compulsory license fees for coin-operated phonorecord players.**

- (a) Commencing January 1, 1982, the annual compulsory license fee for a coin-operated phonorecord player shall be \$25.
- (b) Commencing January 1, 1984, the annual compulsory license fee for a coin-operated phonorecord player shall be \$50.
- (c) Commencing January 1, 1987, the annual compulsory license fee for a coin-operated phonorecord player shall be \$63.

(d) If performances are made available on a particular coin-operated phonorecord player for the first time after July 1 of any year, the compulsory license fee for the remainder of that year shall be one half of the annual rate of (a), (b), or (c) of this section, whichever is applicable.

(e) Commencing January 1, 1990, the annual compulsory license fee for a coin-operated phonorecord player is suspended through December 31, 1999, or until such earlier or later time as the March 1990 license agreement between AMOA and ASCAP/BMI/SESAC is terminated.

[51 FR 27537, Aug. 1, 1986, as amended at 55 FR 28197, July 10, 1990. Redesignated at 59 FR 23993, May 9, 1994]

## **§ 255.1 General.**

This part 255 adjusts the rates of royalties payable under the compulsory license for making and distributing phonorecords, including digital phonorecord deliveries, embodying nondramatic musical works, under 17 U.S.C. 115.

[60 FR 61657, Dec. 1, 1995]

## **§ 255.2 Royalty payable under compulsory license.**

With respect to each work embodied in the phonorecord, the royalty payable shall be either four cents, or three-quarters of one cent per minute of playing time or fraction thereof, whichever amount is larger, for every phonorecord made and distributed on or after July 1, 1981, subject to adjustment pursuant to § 255.3.

[46 FR 891, Jan. 5, 1981, as amended at 46 FR 62268, Dec. 23, 1981. Redesignated and amended at 59 FR 23993, May 9, 1994]

## **§ 255.3 Adjustment of royalty rate.**

(a) For every phonorecord made and distributed on or after January 1, 1983, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.25 cents, or 0.8 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (b) through (m) of this section.

(b) For every phonorecord made and distributed on or after July 1, 1984, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.5 cents, or 0.85 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (c) through (m) of this section.

(c) For every phonorecord made and distributed on or after January 1, 1986, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.0 cents, or 0.95 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (d) through (m) of this section.

(d) For every phonorecord made and distributed on or after January 1, 1988, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.25 cents, or 1.0

cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (e) through (m) of this section.

(e) For every phonorecord made and distributed on or after January 1, 1990, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.7 cents, or 1.1 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (f) through (m) of this section.

(f) For every phonorecord made and distributed on or after January 1, 1992, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.25 cents, or 1.2 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (g) through (m) of this section.

(g) For every phonorecord made and distributed on or after January 1, 1994, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.6 cents, or 1.25 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (h) through (m) of this section.

(h) For every phonorecord made and distributed on or after January 1, 1996, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (i) through (m) of this section.

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

[60 FR 55459, Nov. 1, 1995, as amended at 63 FR 7289, Feb. 13, 1998]

## **§ 255.4 Definition of digital phonorecord delivery.**

A “ digital phonorecord delivery ” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of time or for a specified number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.

[73 FR 66182, Nov. 7, 2008]

## **§ 255.5 Royalty rate for digital phonorecord deliveries in general.**

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the “Physical Rate”). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

[64 FR 6223, Feb. 9, 1999]

## **§ 255.6 Royalty rate for incidental digital phonorecord deliveries.**

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate



adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

[64 FR 6223, Feb. 9, 1999]

## **§ 255.7 Future proceedings.**

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

[64 FR 6223, Feb. 9, 1999]

## **§ 255.8 Public performances of sound recordings and musical works.**

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

[64 FR 6223, Feb. 9, 1999]

## **§ 256.1 General.**

This part establishes adjusted terms and rates for royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

[47 FR 52159, Nov. 19, 1982. Redesignated at 59 FR 23993, May 9, 1994, and amended at 60 FR 8198, Feb. 13, 1995]

## **§ 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.**

(a) Commencing with the second semiannual accounting period of 2005 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. 111(d)(1)(B) shall be as follows:

(1) 1.013 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fees, if any, payable pursuant to paragraphs (a) (2) through (4) and (c);

(2) 1.013 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .668 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .314 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the second semiannual accounting period of 2005 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C. 111(d)(1) (C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total \$263,800 or less, gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which \$263,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$10,400. The royalty fee payable under this paragraph shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by the subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$263,800 but less than \$527,600, the royalty fee payable under this paragraph shall be:

(i) 0.5 of 1 per centum of any gross receipts up to \$263,800 and

(ii) 1 per centum of any gross receipts in excess of \$263,800 but less than \$527,600, regardless of the number of distant signal equivalents, if any.

(c) Notwithstanding paragraphs (a) and (d) of this section, commencing with the first accounting period of 1983 and for each semiannual accounting period thereafter, for each distant signal equivalent or fraction thereof not represented by the carriage of:

(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

(2) A signal of the same type (that is, independent, network, or non-commercial educational) substituted for such permitted signal, or

(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981; the royalty rate shall be, in lieu of the royalty rates specified in paragraphs (a) (2) through (4) and (d) of this section, 3.75 per centum of the gross receipts of the cable systems for each distant signal equivalent; any fraction of a distant signal equivalent shall be computed at its fractional value.

(d) Commencing with the first semiannual accounting period of 1990 and for each semiannual accounting period thereafter, in the case of a cable system located outside the 35-mile specified zone of a commercial VHF station that places a predicted Grade B contour, in whole or in part, over the cable system, and that is not significantly viewed or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981, for each distant signal equivalent or fraction thereof represented by the carriage of such commercial VHF station, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section,

(1) For cable systems located wholly or in part within a top 50 television market,

(i) .599 per centum of such gross receipts for the first distant signal equivalent;

(ii) .377 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .178 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(2) For cable systems located wholly or in part within a second 50 television market,

(i) .300 per centum of such gross receipts for the first distant signal equivalent;

(ii) .189 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .089 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(3) For purposes of this section top 50 television markets and "second 50 television markets" shall be defined as the comparable terms are defined or interpreted in accordance with 47 CFR 76.51, as effective June 24, 1981.

[47 FR 52159, Nov. 19, 1982, as amended at 50 FR 18481, May 1, 1985; 54 FR 12619, Mar. 28, 1989; 55 FR 33613, Aug. 16, 1990; 56 FR 12122, Mar. 22, 1991. Redesignated at 59 FR 23993, May 9, 1994, as amended at 63 FR 30636, June 5, 1998; 63 FR 39739, July 24, 1998; 65 FR 39820, June 28, 2000; 65 FR 64623, Oct. 30, 2000; 70 FR 58311, Oct. 6, 2005]

## **§ 258.1 General.**

This part 258 adjusts the rates of royalties payable under the compulsory license for the secondary transmission of broadcast stations under 17 U.S.C. 119.

[57 FR 19053, May 1, 1992. Redesignated and amended at 59 FR 23994, May 9, 1994; 63 FR 30636, June 5, 1998]

## **§ 258.2 Definitions.**

(a) Commercial establishment. The term “commercial establishment” means an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, oil rigs, retail stores, banks and financial institutions, supermarkets, auto and boat dealerships, and other establishments with common business areas; provided that the term “commercial establishment” shall not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons, all of which shall be subject to the rates applicable to private home viewing.

(b) Syndex-proof signal. A satellite retransmission of a broadcast signal shall be deemed “syndex proof” for purposes of § 258.3(a) if, during any semi-annual reporting period, the retransmission does not include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission.

(c) Per subscriber per month. The term “per subscriber per month” means each subscriber subscribing to the station in question, or to a package including such station, on the last day of a given month.

[70 FR 17320, Apr. 6, 2005, as amended at 70 FR 39179, July 7, 2005]

## **§ 258.3 Royalty fee for secondary transmission of analog signals of broadcast stations by satellite carriers.**

(a) Commencing May 1, 1992, the royalty rate for the secondary transmission of analog signals of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 17.5 cents per subscriber per month for superstations.

(2) 14 cents per subscriber per month for superstations whose signals are syndex-proof, as defined in § 258.2.

(3) 6 cents per subscriber per month for network stations and noncommercial educational stations.

(b) Commencing January 1, 1998, the royalty fee for secondary transmission of analog signals of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 27 cents per subscriber per month for distant superstations.

(2) 27 cents per subscriber per month for distant network stations.

(3) No royalty rate (zero) for a superstation secondarily transmitted within the station's local market, as defined in 17 U.S.C. 119(d)(11).

(4) No royalty rate (zero) for a network station secondarily transmitted within the station's local market, as defined in 17 U.S.C. 119(d)(11), to subscribers residing in unserved households, as defined in 17 U.S.C. 119(d)(10).

(c) Commencing July 1, 1999, the royalty rate for secondary transmission of analog signals of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 18.9 cents per subscriber per month for distant superstations.

- (2) 14.85 cents per subscriber per month for distant network stations.
- (3) 14.85 cents per subscriber per month for the Public Broadcasting Service satellite feed.
- (d) Commencing January 1, 2005, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:
  - (1) For private home viewing—
    - (i) 20 cents per subscriber per month for distant superstations.
    - (ii) 17 cents per subscriber per month for distant network stations.
  - (2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.
- (e) Commencing January 1, 2006, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:
  - (1) For private home viewing—
    - (i) 21.5 cents per subscriber per month for distant superstations.
    - (ii) 20 cents per subscriber per month for distant network stations.
  - (2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.
- (f) Commencing January 1, 2007, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:
  - (1) For private home viewing—
    - (i) 23 cents per subscriber per month for distant superstations.
    - (ii) 23 cents per subscriber per month for distant network stations.
  - (2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.
- (g) Commencing January 1, 2008, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:
  - (1) For private home viewing—
    - (i) 24 cents per subscriber per month for distant superstations.
    - (ii) 24 cents per subscriber per month for distant network stations.
  - (2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.
- (h) Commencing January 1, 2009, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:
  - (1) For private home viewing—
    - (i) 24 cents per subscriber per month for distant superstations.
    - (ii) 24 cents per subscriber per month for distant network stations.
  - (2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.

[62 FR 55759, Oct. 28, 1997, as amended at 64 FR 71660, Dec. 22, 1999; 70 FR 17320, Apr. 6, 2005; 70 FR 39179, July 7, 2005; 73 FR 14185, Mar. 17, 2008; 74 FR 12093, Mar. 23, 2009]

## **§ 258.4 Royalty fee for secondary transmission of digital signals of broadcast stations by satellite carriers.**

(a) Commencing January 1, 2005, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 20 cents per subscriber per month for distant superstations.

(ii) 17 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(b) Commencing January 1, 2006, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 21.5 cents per subscriber per month for distant superstations.

(ii) 20 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.

(c) Commencing January 1, 2007, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 23 cents per subscriber per month for distant superstations.

(ii) 23 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(d) Commencing January 1, 2008, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 24 cents per subscriber per month for distant superstations.

(ii) 24 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.

(e) Commencing January 1, 2009, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

- (i) 24 cents per subscriber per month for distant superstations.
  - (ii) 24 cents per subscriber per month for distant network stations.
  - (2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.
  - (f) For purposes of calculating the royalty rates for secondary transmission of digital signals of broadcast stations by satellite carriers—
    - (1) In the case of digital multicasting, the rates in paragraphs (a) through (e) of this section apply to each digital stream that a satellite carrier or distributor retransmits pursuant to section 119; provided, however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream; and
    - (2) Satellite carriers and distributors are not required to pay a section 119 royalty for the retransmission of a digital signal to a subscriber who resides in a community where that signal is “significantly viewed,” within the meaning of 17 U.S.C. 119(a)(3) and (b)(1), as amended.
- [70 FR 39179, July 7, 2005, as amended at 73 FR 14185, Mar. 17, 2008; 74 FR 12093, Mar. 23, 2009]

## **PART 260—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND MAKING OF EPHEMERAL PHONORECORDS**

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Authority: 17 U.S.C. 114, 801(b)(1).

Source: 63 FR 25413, May 8, 1998, unless otherwise noted.

### **§ 260.1 General**

(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection

with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

[68 FR 39840, July 3, 2003]

## **§ 260.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.**

(a) Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of \$100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on August 20, 2003. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(e)(1) For purposes of this section, gross revenues shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;



- (ii) Licensee's advertising revenues (as billed), or other monies received from sponsors if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;
  - (iii) Monies received for the provision of time on the programming service to any third party;
  - (iv) Monies received from the sale of time to providers of paid programming such as infomercials;
  - (v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;
  - (vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;
  - (vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and
  - (viii) Bad debts recovered regarding paragraphs (e)(1) (i) through (vii) of this section.
- (2) Gross revenues shall include such payments as set forth in paragraphs (e)(1) (i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (e)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.
- (f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

[63 FR 25413, May 8, 1998, as amended at 64 FR 36576, July 7, 1999; 65 FR 39820, June 28, 2000; 68 FR 36470, June 18, 2003; 68 FR 39840, July 3, 2003]

## **§ 260.3 Terms for making payment of royalty fees.**

- (a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.
- (b) Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.
- (c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).
- (d) The designated agent may deduct from any of its receipts paid by Licensees under § 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1)

& (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.

(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.

(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and July 31, 2003, to the Designated Agent, less any amounts previously paid by such period to the Recording Industry Association of America, Inc., or SoundExchange by September 15, 2003.

[63 FR 25413, May 8, 1998, as amended at 63 FR 30636, June 5, 1998; 68 FR 36470, June 18, 2003; 68 FR 39841, July 3, 2003]

## **§ 260.4 Confidential information and statements of account.**

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt preexisting subscription service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§ 260.5 and 260.6 of this part.

(b) Nonexempt preexisting subscription services shall submit monthly statements of account on a form provided by the agent designated to collect such forms and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(e) The designated agent or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

[63 FR 25413, May 8, 1998, as amended at 68 FR 39841, July 3, 2003]

## **§ 260.5 Verification of statements of account.**

(a) General. This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) Frequency of verification. Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) Notice of intent to audit. Interested parties must submit a notice of intent to audit a particular service with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) Retention of records. The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) Costs of the verification procedure. The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) Interested parties. For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the entity designated by the copyright arbitration royalty panel in 37 CFR 260.3 to receive and to distribute the royalty fees.

[63 FR 25413, May 8, 1998, as amended at 68 FR 39841, July 3, 2003]

## **§ 260.6 Verification of royalty payments.**

(a) General . This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and

rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) Frequency of verification . Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) Notice of intent to audit . Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) Retention of records. The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) Costs of the verification procedure. The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) Interested parties. For purposes of this section, interested parties are those who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

[68 FR 36470, June 18, 2003, as amended at 68 FR 39841, July 3, 2003]

## **§ 260.7 Unknown copyright owners.**

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three-year period. After the expiration of this period, the collecting agent may use the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3).

[63 FR 25413, May 8, 1998, as amended at 64 FR 36576, July 7, 1999; 68 FR 36470, June 18, 2003; 68 FR 39841, July 3, 2003; 68 FR 57815, Oct. 7, 2003]

## **PART 261—RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS**

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Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

Source: 67 FR 45272, July 8, 2002, unless otherwise noted.

§ 261.1 General.

(a) This part 261 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e).

(b) Licensees relying upon the statutory license set forth in 17 U.S.C. 114 shall comply with the requirements of that section and the rates and terms of this part.

(c) Licensees relying upon the statutory license set forth in 17 U.S.C. 112 shall comply with the requirements of that section and the rates and terms of this part.

(d) Notwithstanding the schedule of rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services within the scope of 17 U.S.C. 112 and 114 concerning eligible nonsubscription transmissions shall apply in lieu of the rates and terms of this part.

## § 261.2 Definitions.

For purposes of this part, the following definitions shall apply:

Aggregate Tuning Hours mean the total hours of programming that the Licensee has transmitted over the Internet during the relevant period to all end users within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's Aggregate Tuning Hours would equal 10. Likewise, if one listener listened to a service for 10 hours, the service's Aggregate Tuning Hours would equal 10.

Business Establishment Service is a Licensee that is entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that obtains a compulsory license under 17 U.S.C. 112(e) to make ephemeral recordings for the sole purpose of facilitating those exempt transmissions.

Commercial Broadcaster is a Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission to make over-the-air broadcasts, other than a CPB-Affiliated or Non-CPB-Affiliated, Non-Commercial Broadcaster.

Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

Designated Agent is the agent designated by the Librarian of Congress for the receipt of royalty payments made pursuant to this part from the Receiving Agent. The Designated Agent shall make further distribution of those royalty payments to Copyright Owners and Performers that have been identified in § 261.4(c).

Ephemeral Recording is a phonorecord created solely for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Gross proceeds mean all fees and payments, as used in § 261.3(d), including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating

a transmission to the public of a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

Licensee is: (1) A person or entity that has obtained a compulsory license under 17 U.S.C. 112 or 114 and the implementing regulations therefor to make eligible non-subscription transmissions and ephemeral recordings, or

(2) A person or entity entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that has obtained a compulsory license under 17 U.S.C. 112 to make ephemeral recordings.

Listener is a recipient of a transmission of a public performance of a sound recording made by a Licensee or a Business Establishment Service. However, if more than one person is listening to a transmission made to a single machine or device, those persons collectively constitute a single listener.

Non-CPB, Non-Commercial Broadcaster is a Public Broadcasting Entity as defined in 17 U.S.C. 118(g) that is not qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener via a Web Site transmission or retransmission (e.g. the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained license from the copyright owner of such sound recording; and

(3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performer means the respective independent administrators identified in 17 U.S.C. 114(g)(2)(A) and (B) and the parties identified in 17 U.S.C. 114(g)(2)(C).

Receiving Agent is the agent designated by the Librarian of Congress for the collection of royalty payments made pursuant to this part by Licensees and the distribution of those royalty payments to Designated Agents, and that has been identified as such in § 261.4(b). The Receiving Agent may also be a Designated Agent.

Side channel is a channel on the Web Site of a Commercial Broadcaster or a Non-CPB, Non-Commercial Broadcaster, which channel transmits eligible non-subscription transmissions that are not simultaneously transmitted over-the-air by the Licensee.

Webcaster is a Licensee, other than a Commercial Broadcaster, Non-CPB, Non-Commercial Broadcaster or Business Establishment Service, that makes eligible non-subscription transmissions of digital audio programming over the Internet through a Web Site.

Web Site is a site located on the World Wide Web that can be located by an end user through a principal Uniform Resource Locator (a "URL"), e.g., [www.xxxxx.com](http://www.xxxxx.com).

§ 261.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) For the period October 28, 1998, through December 31, 2002, royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114(d)(2), and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial Broadcaster Performance Royalty.



(i) For simultaneous Internet retransmissions of over-the-air AM or FM broadcasts by the same radio station, a non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(ii) For other Internet transmissions, including up to two side channels of programming consistent with the mission of the station, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(iii) For Internet transmissions on other side channels of programming, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(b) Estimate of Performance. Until December 31, 2002, a Webcaster, Commercial Broadcaster, or Non-CPB, Non-Commercial Broadcaster may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of transmissions or retransmissions of radio station programming reasonably classified as news, business, talk or sports, and 12 performances per hour in the case of transmissions or retransmissions of all other radio station programming).

(c) Webcaster and Broadcaster Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings to facilitate the Internet transmission of a sound recording, each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster shall pay a section 112(e) royalty equal to 8.8% of their total performance royalty.

(d) Business Establishment Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv), a Business Establishment Service shall pay a section 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program,

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(e) Minimum fee. (1) Each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster licensed to make eligible digital transmissions and/or ephemeral

recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall pay a minimum fee of \$500 for each calendar year, or part thereof, in which it makes such transmissions or recordings.

(2) Each Business Establishment Service licensed to make ephemeral recordings pursuant to a license under 17 U.S.C. 112(e) shall pay a minimum fee of \$10,000 for each calendar year, or part thereof, in which it makes such recordings.

§ 261.4 Terms for making payment of royalty fees and statements of account.

(a) A Licensee shall make the royalty payments due under § 261.3 to the Receiving Agent. If there are more than one Designated Agent representing Copyright Owners or Performers entitled to receive any portion of the royalties paid by the Licensee, the Receiving Agent shall apportion the royalty payments among Designated Agents using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such apportionment shall be made on a reasonable basis that uses a methodology that values all performances equally and is agreed upon among the Receiving Agent and the Designated Agents. Within 30 days of adoption of a methodology for apportioning royalties among Designated Agents, the Receiving Agent shall provide the Register of Copyrights with a detailed description of that methodology.

(b) Until such time as a new designation is made, SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., is designated as the Receiving Agent to receive statements of account and royalty payments from Licensees. Until such time as a new designation is made, Royalty Logic, Inc. and SoundExchange are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners.

(c) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners, except when a Copyright Owner or Performer has notified SoundExchange in writing of an election to receive royalties from a particular Designated Agent. With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a particular Designated Agent must be made no later than thirty days prior to the receipt by the Receiving Agent of that royalty payment.

(d) Commencing September 1, 2002, a Licensee shall make any payments due under § 261.3 to the Receiving Agent by the forty-fifth (45th) day after the end of each month for that month. Concurrently with the delivery of payment to the Receiving Agent, a Licensee shall deliver to each Designated Agent a copy of the statement of account for such payment. A Licensee shall

pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Receiving Agent after the due date. Late fees shall accrue from the due date until payment is received by the Receiving Agent.

(e) A Licensee shall make any payments due under § 261.3 for transmissions made between October 28, 1998, and August 31, 2002, to the Receiving Agent by October 20, 2002.

(f) A Licensee shall submit a monthly statement of account for accompanying royalty payments on a form prepared by the Receiving Agent after full consultation with all Designated Agents. The form shall be made available to the Licensee by the Receiving Agent. A statement of account shall include only such information as is necessary to calculate the accompanying royalty payment. Additional information beyond that which is sufficient to calculate the royalty payments to be paid shall not be required to be included on the statement of account.

(g) The Receiving Agent shall make payments of the allocable share of any royalty payment received from any Licensee under this section to the Designated Agent(s) as expeditiously as is reasonably possible following receipt of the Licensee's royalty payment and statement of account as well as the Licensee's Report of Use of Sound Recordings under Statutory License for the period to which the royalty payment and statement of account pertain, with such allocation to be made on the basis determined as set forth in paragraph (a) of this section. The Receiving Agent and the Designated Agent shall agree on a reasonable basis on the sharing on a pro-rata basis of any incremental costs directly associated with the allocation method. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and a Designated Agent for each calendar year no later than 180 days following the end of each calendar year.

(h) The Designated Agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances; Provided, however, that Copyright Owners and Performers who have designated a particular Designated Agent may agree to allocate their shares of the royalty payments among themselves on an alternative basis.

(i)(1) A Designated Agent shall provide to the Register of Copyrights:

(i) A detailed description of its methodology for distributing royalty payments to Copyright Owners and Performers who have not agreed to an alternative basis for allocating their share of royalty payments (hereinafter, "non-members"), and any amendments thereto, within 30 days of adoption and no later than 60 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a non-member concerning the distribution of royalty payments, within 30 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (i)(1)(ii) of this section, within 60 days of such disposition.

(2) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Agent's methodology for distributing royalty payments to non-members meets the requirements of this section.

(j) A Designated Agent shall distribute such royalty payments directly to the Copyright Owners and Performers, according to the percentages set forth in 17 U.S.C. 114(g)(2), if such Copyright Owners and Performers provide the Designated Agent with adequate information necessary to identify the correct recipient for such payments. However, Performers and Copyright Owners may jointly agree with a Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties to Performers and Copyright Owners consistent with the percentages in 17 U.S.C. 114(g)(2).

(k) A Designated Agent may deduct from the royalties paid to Copyright Owners and Performers reasonable costs incurred in the collection and distribution of the royalties paid by Licensees under § 261.3, and a reasonable charge for administration.

(l) In the event a Designated Agent and a Receiving Agent cannot agree upon a methodology for apportioning royalties pursuant to paragraph (a) of this section, either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute.

#### § 261.5 Confidential information.

(a) For purposes of this part, "Confidential Information" shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Receiving Agent or a Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) In no event shall the Receiving Agent or Designated Agent(s) use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may report Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any Licensee or group of Licensees cannot directly or indirectly be ascertained or reasonably approximated. All reported aggregated Confidential Information from Licensees within a class of Licensees shall concurrently be made available to all Licensees then in such class. As used in this paragraph, the phrase “class of Licensees” means all Licensees paying fees pursuant to § 261.4(a).

(d) Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to, and in the case of paragraphs (d)(3) and (d)(4) of this section shall be provided upon request, subject to resolution of any relevance or burdensomeness concerns and reimbursement of reasonable costs directly incurred in responding to such request, to:

(1) Those employees, agents, consultants and independent contractors of the Receiving Agent or a Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Receiving Agent or a Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 261.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 261.7;

(3) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(4) In connection with bona fide royalty disputes or claims by or among Licensees, the Receiving Agent, Copyright Owners, Performers or the Designated Agent(s), under an appropriate confidentiality agreement or protective order, attorneys, consultants and other authorized agents of the parties to the dispute, arbitration panels or the courts.

(e) The Receiving Agent or Designated Agent(s) and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a

reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Receiving Agent or Designated Agent(s) or person.

(f) Books and records of a Licensee, the Receiving Agent and of a Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

#### § 261.6 Verification of statements of account.

(a) General. This section prescribes general rules pertaining to the verification of the statements of account by the Designated Agent.

(b) Frequency of verification. A Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. A Designated Agent must submit a notice of intent to audit a particular Licensee with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the Designated Agent's notice. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Designated Agents, and all Copyright Owners and Performers.

(d) Acquisition and retention of records. The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Designated Agent requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all Designated Agents with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Designated Agent requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Licensee shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Licensee and more than \$5,000.00.

#### § 261.7 Verification of royalty payments.

(a) General. This section prescribes general rules pertaining to the verification by any Copyright Owner or Performer of royalty payments made by a Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and a Designated Agent have agreed as to proper verification methods.

(b) Frequency of verification. A Copyright Owner or a Performer may conduct a single audit of a Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. A Copyright Owner or Performer must submit a notice of intent to audit a particular Designated Agent with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the notice. The notification of intent to audit shall be served at the same time on the Designated Agent to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) Acquisition and retention of records. The Designated Agent making the royalty payment shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Copyright Owner or Performer requesting the

verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Designated Agent shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Designated Agent and more than \$5,000.00.

#### § 261.8 Unclaimed funds.

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of three (3) years from the date of payment. No claim to such payment shall be valid after the expiration of the three (3) year period. After the expiration of this period, the unclaimed funds of the Designated Agent may first be applied to the costs directly attributable to the administration of the royalty payments due such unidentified Copyright Owners and Performers and shall thereafter be allocated on a pro rata basis among the Designated Agents(s) to be used to offset such Designated Agent(s) other costs of collection and distribution of the royalty fees.



# **PART 261—RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS**

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Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

Source: 67 FR 45272, July 8, 2002, unless otherwise noted.

## **§ 261.1 General.**

(a) This part 261 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e).

(b) Licensees relying upon the statutory license set forth in 17 U.S.C. 114 shall comply with the requirements of that section and the rates and terms of this part.

(c) Licensees relying upon the statutory license set forth in 17 U.S.C. 112 shall comply with the requirements of that section and the rates and terms of this part.

(d) Notwithstanding the schedule of rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services within the scope of 17 U.S.C. 112 and 114 concerning eligible nonsubscription transmissions shall apply in lieu of the rates and terms of this part.

## **§ 261.2 Definitions.**

For purposes of this part, the following definitions shall apply:

Aggregate Tuning Hours mean the total hours of programming that the Licensee has transmitted over the Internet during the relevant period to all end users within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's Aggregate Tuning Hours would equal

10. Likewise, if one listener listened to a service for 10 hours, the service's Aggregate Tuning Hours would equal 10.

Business Establishment Service is a Licensee that is entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that obtains a compulsory license under 17 U.S.C. 112(e) to make ephemeral recordings for the sole purpose of facilitating those exempt transmissions.

Commercial Broadcaster is a Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission to make over-the-air broadcasts, other than a CPB-Affiliated or Non-CPB-Affiliated, Non-Commercial Broadcaster.

Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

Designated Agent is the agent designated by the Librarian of Congress for the receipt of royalty payments made pursuant to this part from the Receiving Agent. The Designated Agent shall make further distribution of those royalty payments to Copyright Owners and Performers that have been identified in § 261.4(c).

Ephemeral Recording is a phonorecord created solely for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Gross proceeds mean all fees and payments, as used in § 261.3(d), including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

Licensee is: (1) A person or entity that has obtained a compulsory license under 17 U.S.C. 112 or 114 and the implementing regulations therefor to make eligible non-subscription transmissions and ephemeral recordings, or

(2) A person or entity entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that has obtained a compulsory license under 17 U.S.C. 112 to make ephemeral recordings.

Listener is a recipient of a transmission of a public performance of a sound recording made by a Licensee or a Business Establishment Service. However, if more than one person is listening to a transmission made to a single machine or device, those persons collectively constitute a single listener.

Non-CPB, Non-Commercial Broadcaster is a Public Broadcasting Entity as defined in 17 U.S.C. 118(g) that is not qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener via a Web Site transmission or retransmission (e.g. the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained license from the copyright owner of such sound recording; and

(3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performer means the respective independent administrators identified in 17 U.S.C. 114(g)(2)(A) and (B) and the parties identified in 17 U.S.C. 114(g)(2)(C).

Receiving Agent is the agent designated by the Librarian of Congress for the collection of royalty payments made pursuant to this part by Licensees and the distribution of those royalty payments to Designated Agents, and that has been identified as such in § 261.4(b). The Receiving Agent may also be a Designated Agent.

Side channel is a channel on the Web Site of a Commercial Broadcaster or a Non-CPB, Non-Commercial Broadcaster, which channel transmits eligible non-subscription transmissions that are not simultaneously transmitted over-the-air by the Licensee.

Webcaster is a Licensee, other than a Commercial Broadcaster, Non-CPB, Non-Commercial Broadcaster or Business Establishment Service, that makes eligible non-subscription transmissions of digital audio programming over the Internet through a Web Site.

Web Site is a site located on the World Wide Web that can be located by an end user through a principal Uniform Resource Locator (a "URL"), e.g., [www.xxxxx.com](http://www.xxxxx.com).

### **§ 261.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.**

(a) For the period October 28, 1998, through December 31, 2002, royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114(d)(2), and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial Broadcaster Performance Royalty.

(i) For simultaneous Internet retransmissions of over-the-air AM or FM broadcasts by the same radio station, a non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(ii) For other Internet transmissions, including up to two side channels of programming consistent with the mission of the station, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(iii) For Internet transmissions on other side channels of programming, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(b) Estimate of Performance. Until December 31, 2002, a Webcaster, Commercial Broadcaster, or Non-CPB, Non-Commercial Broadcaster may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of transmissions or retransmissions of radio station programming reasonably classified as news, business, talk or sports, and 12 performances per hour in the case of transmissions or retransmissions of all other radio station programming).

(c) Webcaster and Broadcaster Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings to facilitate the Internet transmission of a sound recording, each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster shall pay a section 112(e) royalty equal to 8.8% of their total performance royalty.

(d) Business Establishment Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv), a Business Establishment Service shall pay a section 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program,

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(e) Minimum fee. (1) Each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster licensed to make eligible digital transmissions and/or ephemeral recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall pay a minimum fee of \$500 for each calendar year, or part thereof, in which it makes such transmissions or recordings.

(2) Each Business Establishment Service licensed to make ephemeral recordings pursuant to a license under 17 U.S.C. 112(e) shall pay a minimum fee of \$10,000 for each calendar year, or part thereof, in which it makes such recordings.

## **§ 261.4 Terms for making payment of royalty fees and statements of account.**

(a) A Licensee shall make the royalty payments due under § 261.3 to the Receiving Agent. If there are more than one Designated Agent representing Copyright Owners or Performers entitled

to receive any portion of the royalties paid by the Licensee, the Receiving Agent shall apportion the royalty payments among Designated Agents using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such apportionment shall be made on a reasonable basis that uses a methodology that values all performances equally and is agreed upon among the Receiving Agent and the Designated Agents. Within 30 days of adoption of a methodology for apportioning royalties among Designated Agents, the Receiving Agent shall provide the Register of Copyrights with a detailed description of that methodology.

(b) Until such time as a new designation is made, SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., is designated as the Receiving Agent to receive statements of account and royalty payments from Licensees. Until such time as a new designation is made, Royalty Logic, Inc. and SoundExchange are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners.

(c) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners, except when a Copyright Owner or Performer has notified SoundExchange in writing of an election to receive royalties from a particular Designated Agent. With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a particular Designated Agent must be made no later than thirty days prior to the receipt by the Receiving Agent of that royalty payment.

(d) Commencing September 1, 2002, a Licensee shall make any payments due under § 261.3 to the Receiving Agent by the forty-fifth (45th) day after the end of each month for that month. Concurrently with the delivery of payment to the Receiving Agent, a Licensee shall deliver to each Designated Agent a copy of the statement of account for such payment. A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Receiving Agent after the due date. Late fees shall accrue from the due date until payment is received by the Receiving Agent.

(e) A Licensee shall make any payments due under § 261.3 for transmissions made between October 28, 1998, and August 31, 2002, to the Receiving Agent by October 20, 2002.

(f) A Licensee shall submit a monthly statement of account for accompanying royalty payments on a form prepared by the Receiving Agent after full consultation with all Designated Agents. The form shall be made available to the Licensee by the Receiving Agent. A statement of account shall include only such information as is necessary to calculate the accompanying royalty payment. Additional information beyond that which is sufficient to calculate the royalty payments to be paid shall not be required to be included on the statement of account.

(g) The Receiving Agent shall make payments of the allocable share of any royalty payment received from any Licensee under this section to the Designated Agent(s) as expeditiously as is reasonably possible following receipt of the Licensee's royalty payment and statement of account as well as the Licensee's Report of Use of Sound Recordings under Statutory License for the period to which the royalty payment and statement of account pertain, with such allocation to be made on the basis determined as set forth in paragraph (a) of this section. The Receiving Agent

and the Designated Agent shall agree on a reasonable basis on the sharing on a pro-rata basis of any incremental costs directly associated with the allocation method. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and a Designated Agent for each calendar year no later than 180 days following the end of each calendar year.

(h) The Designated Agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances; Provided, however, that Copyright Owners and Performers who have designated a particular Designated Agent may agree to allocate their shares of the royalty payments among themselves on an alternative basis.

(i)(1) A Designated Agent shall provide to the Register of Copyrights:

(i) A detailed description of its methodology for distributing royalty payments to Copyright Owners and Performers who have not agreed to an alternative basis for allocating their share of royalty payments (hereinafter, “non-members”), and any amendments thereto, within 30 days of adoption and no later than 60 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a non-member concerning the distribution of royalty payments, within 30 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (i)(1)(ii) of this section, within 60 days of such disposition.

(2) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Agent's methodology for distributing royalty payments to non-members meets the requirements of this section.

(j) A Designated Agent shall distribute such royalty payments directly to the Copyright Owners and Performers, according to the percentages set forth in 17 U.S.C. 114(g)(2), if such Copyright Owners and Performers provide the Designated Agent with adequate information necessary to identify the correct recipient for such payments. However, Performers and Copyright Owners may jointly agree with a Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties to Performers and Copyright Owners consistent with the percentages in 17 U.S.C. 114(g)(2).

(k) A Designated Agent may deduct from the royalties paid to Copyright Owners and Performers reasonable costs incurred in the collection and distribution of the royalties paid by Licensees under § 261.3, and a reasonable charge for administration.

(l) In the event a Designated Agent and a Receiving Agent cannot agree upon a methodology for apportioning royalties pursuant to paragraph (a) of this section, either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute.

## **§ 261.5 Confidential information.**

(a) For purposes of this part, “Confidential Information” shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Receiving Agent or a Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) In no event shall the Receiving Agent or Designated Agent(s) use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may report Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any Licensee or group of Licensees cannot directly or indirectly be ascertained or reasonably approximated. All reported aggregated Confidential Information from Licensees within a class of Licensees shall concurrently be made available to all Licensees then in such class. As used in this paragraph, the phrase "class of Licensees" means all Licensees paying fees pursuant to § 261.4(a).

(d) Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to, and in the case of paragraphs (d)(3) and (d)(4) of this section shall be provided upon request, subject to resolution of any relevance or burdensomeness concerns and reimbursement of reasonable costs directly incurred in responding to such request, to:

(1) Those employees, agents, consultants and independent contractors of the Receiving Agent or a Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Receiving Agent or a Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 261.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 261.7;

(3) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(4) In connection with bona fide royalty disputes or claims by or among Licensees, the Receiving Agent, Copyright Owners, Performers or the Designated Agent(s), under an appropriate confidentiality agreement or protective order, attorneys, consultants and other authorized agents of the parties to the dispute, arbitration panels or the courts.

(e) The Receiving Agent or Designated Agent(s) and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Receiving Agent or Designated Agent(s) or person.

(f) Books and records of a Licensee, the Receiving Agent and of a Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

## **§ 261.6 Verification of statements of account.**

(a) General. This section prescribes general rules pertaining to the verification of the statements of account by the Designated Agent.

(b) Frequency of verification. A Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. A Designated Agent must submit a notice of intent to audit a particular Licensee with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the Designated Agent's notice. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Designated Agents, and all Copyright Owners and Performers.

(d) Acquisition and retention of records. The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Designated Agent requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all Designated Agents with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Designated Agent requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Licensee shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Licensee and more than \$5,000.00.



## **§ 261.7 Verification of royalty payments.**

(a) General. This section prescribes general rules pertaining to the verification by any Copyright Owner or Performer of royalty payments made by a Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and a Designated Agent have agreed as to proper verification methods.

(b) Frequency of verification. A Copyright Owner or a Performer may conduct a single audit of a Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. A Copyright Owner or Performer must submit a notice of intent to audit a particular Designated Agent with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the notice. The notification of intent to audit shall be served at the same time on the Designated Agent to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) Acquisition and retention of records. The Designated Agent making the royalty payment shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Designated Agent shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Designated Agent and more than \$5,000.00.

## **§ 261.8 Unclaimed funds.**

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of three (3) years from the date of payment. No claim to such payment shall be valid after the expiration of the three (3) year period. After the expiration of this period, the unclaimed funds of the Designated Agent may first be applied to the costs directly attributable to the administration of the royalty payments due such unidentified Copyright Owners and Performers and shall thereafter be allocated on a pro rata basis among the Designated Agents(s) to be used to offset such Designated Agent(s) other costs of collection and distribution of the royalty fees.

## **PART 262—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS**

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Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

Source: 69 FR 5695, Feb. 6, 2004, unless otherwise noted.

## **§ 262.1 General.**

(a) Scope. This part 262 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003-2004 and in the case of Subscription Services 1998-2004 (the “License Period”).

(b) Legal compliance. Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, the rates and terms of this part and any other applicable regulations.

(c) Relationship to voluntary agreements. Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to transmissions within the scope of such agreements.

## **§ 262.2 Definitions.**

For purposes of this part, the following definitions shall apply:

(a) Aggregate Tuning Hours means the total hours of programming that the Licensee has transmitted during the relevant period to all Listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous Listeners, the service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one Listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

(b) Broadcast Simulcast means

(1) A simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, and

(2) An Internet transmission in accordance with 17 U.S.C. 114(d)(2)(C)(iii) of an archived program, which program was previously broadcast over-the-air by a terrestrial AM or FM broadcast radio station, in either case whether such Internet transmission or retransmission is made by the owner and operator of the AM or FM radio station that makes the broadcast or by a third party.

(c) Business Establishment Service means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

(d) Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

(e) Designated Agent is the agent designated by the Librarian of Congress as provided in § 262.4(b).

(f) Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

(g) Licensee is a person or entity that

(1) Has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)), or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings for use in facilitating such transmissions, or

(2) Is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings, but not a person or entity that:

(i) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(ii) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(iii) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

(h) Listener is a player, receiving device or other point receiving and rendering a transmission of a public performance of a sound recording made by a Licensee, irrespective of the number of individuals present to hear the transmission.

(i) Nonsubscription Service means a service making eligible nonsubscription transmissions.

(j) Performance is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(k) Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

(l) Subscription Service means a new subscription service (as defined in 17 U.S.C. 114(j)(8)) making noninteractive digital audio transmissions.

(m) Subscription Service Revenues shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

(1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;

(2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether

(i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or

(ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or

(iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;

(3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less

(i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,

(ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and

(iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:

(A) The fact that a transaction is consummated on a different page than the page/location where a potential customer responds to a "buy button" or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third-party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber

contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (m)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.

[69 FR 5695, Feb. 6, 2004; 69 FR 8822, Feb. 26, 2004]

### **§ 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.**

(a) Basic royalty rate. Royalty rates and fees for eligible nonsubscription transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) during the period January 1, 2003, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; noninteractive digital audio transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) as part of a new subscription service during the period October 28, 1998, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; and the making of Ephemeral Recordings by Business Establishment Services pursuant to 17 U.S.C. 112(e) during the period January 1, 2003, through December 31, 2004, shall be as follows:

(1) Nonsubscription Services. For their operation of Nonsubscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) Per Performance Option. \$0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to “skip” a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) Aggregate Tuning Hour Option —(A) Non-Music Programming. \$0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) Broadcast Simulcasts. \$0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) Other Programming. \$0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(2) Subscription Services. For their operation of Subscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) Per Performance Option. \$0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to “skip” a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial performances.

(ii) Aggregate Tuning Hour Option —(A) Non-Music Programming. \$0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) Broadcast Simulcasts. \$0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) Other Programming. \$0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(iii) Percentage of Subscription Service Revenues Option. 10.9% of Subscription Service Revenues, but in no event less than 27¢ per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (e.g., during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence multiplied by the following fraction: the total number of Performances (as defined under § 262.2(j), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, divided by the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where—

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(m)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription

Service (for example, as in the case of a “bundled service” consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a “loss leader” basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

(3) Business Establishment Services. For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee that is a Business Establishment Service shall pay 10% of such Licensee's “Gross Proceeds” derived from the use in such service of musical programs that are attributable to copyrighted recordings. “Gross Proceeds” as used in paragraph (a)(3) of this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) Election process. A Licensee other than a Business Establishment Service shall elect the particular Nonsubscription Service and/or Subscription Service royalty rate categories it chooses (that is, among paragraph (a)(1)(i) or (ii) of this section and/or paragraph (a)(2)(i), (ii) or (iii) of this section) for the License Period by no later than March 8, 2004. Notwithstanding the preceding sentence, where a Licensee has not previously provided a Nonsubscription Service or Subscription Service, as the case may be, the Licensee may make its election by no later than thirty (30) days after the new service first makes a digital audio transmission of a sound recording under the 17 U.S.C. 114 statutory license. Each such election shall be made by notifying the Designated Agent in writing of such election, using an election form provided by the Designated Agent. A Licensee that fails to make a timely election shall pay royalties as provided in paragraphs (a)(1)(i) and (a)(2)(i) of this section, as applicable. Notwithstanding the foregoing, a Licensee eligible to make royalty payments under an agreement entered into pursuant to the Small Webcaster Settlement Act of 2002 may elect to make payments under such agreement as specified in such agreement.

(c) Ephemeral Recordings. The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Licensee other than a Business Establishment Service during the License Period, and used solely by the Licensee to facilitate transmissions for which it pays royalties as and when provided in this section and § 262.4 shall be deemed to be included within, and to comprise 8.8% of, such royalty payments. The royalty payable under 17 U.S.C. 112(e) for the reproduction of phonorecords by a Business Establishment Service shall be as set forth in paragraph (a)(3) of this section.

(d) Minimum fee —(1) Business Establishment Services. Each Licensee that is a Business Establishment Service shall pay a minimum fee of \$10,000 for each calendar year in which it



makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year.

(2) Other Services. Each Licensee other than a Business Establishment Service shall pay a minimum fee of \$2,500, or \$500 per channel or station (excluding archived programs, but in no event less than \$500 per Licensee), whichever is less, for each calendar year in which it makes eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings for use to facilitate such transmissions, whether or not it does the foregoing for all or any part of the year; except that the minimum annual fee for a Licensee electing to pay under paragraph (a)(2)(iii) of this section shall be \$5,000.

(3) In General. These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(e) Continuing Obligation. For the limited purpose of the period immediately following the License Period, and on an entirely without prejudice and nonprecedential basis relative to other time periods and proceedings, if successor statutory royalty rates for Licensees for the period beginning January 1, 2005, have not been established by January 1, 2005, then Licensees shall pay to the Designated Agent, effective January 1, 2005, and continuing for the period through April 30, 2005, or until successor rates and terms are established, whichever is earlier, an interim royalty pursuant to the same rates and terms as are provided for the License Period. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within 30 days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms. If there is a period of such interim payments, Licensees shall elect the particular royalty rate categories it chooses for the interim period as described in paragraph (b) of this section, except that the election for a service that is in operation shall be made by no later than January 15, 2005.

(f) Other royalty rates and terms. This part 262 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of transmissions beyond those set forth in paragraph (a) of this section. For transmissions other than those governed by paragraph (a) of this section, or the use of Ephemeral Recordings to facilitate such transmissions, persons making such transmissions must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) and 114 or as prescribed by other law, regulation or agreement.

## **§ 262.4 Terms for making payment of royalty fees and statements of account.**

(a) Payment to designated agent. A Licensee shall make the royalty payments due under § 262.3 to the Designated Agent.

(b) Designation of agent and potential successor designated agents. (1) Until such time as a new designation is made, SoundExchange, presently an unincorporated division of the Recording Industry Association of America, Inc. (“RIAA”), is designated as the Designated Agent to receive statements of account and royalty payments from Licensees due under § 262.3 and to

distribute such royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 112(e) or 114(g). SoundExchange shall continue to be designated after its separate incorporation.

(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in paragraphs (b)(2)(i) and (ii) of this section.

(i) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(ii) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(iii) The Copyright Office shall publish in the Federal Register within 30 days of receipt of a petition filed under paragraph (b)(2)(i) or (ii) of this section an order designating the Designated Agents named in such petitions. Nothing contained in this section shall prohibit the petitions filed under paragraphs (b)(2)(i) and (ii) of this section from naming the same successor Designated Agent.

(3) If petitions are filed under paragraphs (b)(2)(i) and (ii) of this section, then, following the actions of the Copyright Office in accordance with paragraph (b)(2)(iii) of this section:

(i) Each of the successor entities shall have all the rights and responsibilities of a Designated Agent under this part 262, except as specifically set forth in this paragraph (b)(3).

(ii) Licensees shall make their royalty payments to the successor entity named by the copyright owner representatives under paragraph (b)(2)(i) of this section (the "Receiving Agent") and shall provide statements of account on a form prepared by the Receiving Agent. Licensees shall submit a copy of each statement of account to the collective named by the performer representatives under paragraph (b)(2)(ii) of this section at the same time such statement of account is delivered to the Receiving Agent.

(iii) The Designated Agents shall agree between themselves concerning responsibility for distributing royalty payments to Copyright Owners and Performers that have not themselves authorized either Designated Agent. The Designated Agents also shall agree to a corresponding methodology for allocating royalty payments between them using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such methodology shall value all performances equally. Within 30 days after their agreement concerning such responsibility and methodology, the Designated Agents shall inform the Register of Copyrights thereof.

(iv) With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a Designated Agent must be made no later than 30 days prior to the receipt by the Receiving Agent of that royalty payment.

(v) The Receiving Agent shall promptly allocate the royalty payments it receives between the two Designated Agents in accordance with the agreed methodology. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and the collectives named under paragraph (b)(2) of this section for each calendar year no later than 180 days following the end of each calendar year. The Designated Agents shall agree on a reasonable basis for the sharing on a pro-rata basis of any costs associated with the allocations set forth in paragraph (b)(3)(iii) of this section.

(vi) If a Designated Agent is unable to locate a Copyright Owner or Performer that the Designated Agent otherwise would be required to pay under this paragraph (b) within 3 years from the date of payment by Licensee, such Copyright Owner's or Performer's share of the payments made by Licensees may first be applied to the costs directly attributable to the administration of the royalty payments due such Copyright Owners and Performers by that Designated Agent and shall thereafter be allocated between the Designated Agents on a pro rata basis (based on distributions to entitled parties) to offset any costs permitted to be deducted by a designated agent under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

(c) Monthly payments. A Licensee shall make any payments due under § 262.3(a) by the 45th day after the end of each month for that month, except that payments due under § 262.3(a) for the period from the beginning of the License Period through the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the Federal Register shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) Minimum payments. A Licensee shall make any payment due under § 262.3(d) by January 31 of the applicable calendar year, except that:

(1) Payment due under § 262.3(d) for 2003, and in the case of a Subscription Service any earlier year, shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the Federal Register ; and

(2) Payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) Late payments. A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Designated Agent after the due date. Late fees shall accrue from the due date until payment is received by the Designated Agent.

(f) Statements of account. For any part of the period beginning on the date these rates and terms are adopted by the Librarian of Congress and published in the Federal Register and ending on December 31, 2004, during which a Licensee operates a service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Designated Agent a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Designated Agent. If a payment is owed for such month, the

statement of account shall accompany the payment. A statement of account shall include only the following information:

- (1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month, including, as applicable, the Performances, Aggregate Tuning Hours (to the nearest minute) or Subscription Service Revenues for the month;
- (2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;
- (3) The handwritten signature of:
  - (i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;
  - (ii) A partner or delegee, if the Licensee is a partnership; or
  - (iii) An officer of the corporation, if the Licensee is a corporation;
- (4) The printed or typewritten name of the person signing the statement of account;
- (5) The date of signature;
- (6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;
- (7) A certification of the capacity of the person signing; and
- (8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) Distribution of payments. (1) The Designated Agent shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that the Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The agent shall distribute royalty payments on a basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize the Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(2) The Designated Agent shall inform the Register of Copyrights of:

(i) Its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent (hereinafter “nonmembers”), and any amendments thereto, within 60 days of adoption and no later than 30 days prior to the first

distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (g)(2)(ii) of this section, within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent's methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) Permitted deductions. The Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit the Designated Agent to make any other deductions.

(i) Retention of records. Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

## **§ 262.5 Confidential information.**

(a) Definition. For purposes of this part, “Confidential Information” shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Exclusion. Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) Use of Confidential Information. In no event shall the Designated Agent use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may disclose to Copyright Owners and Performers Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any individual Licensee cannot readily be identified, and the Designated Agent may disclose the identities of services that have obtained licenses under 17 U.S.C. 112(e) or 114 and whether or not such services are current in their obligations to pay minimum fees and submit statements of account (so long as the Designated Agent does not disclose the amounts paid by the Licensee).

(d) Disclosure of Confidential Information. Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are

not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 262.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 262.7;

(3) The Copyright Office, in response to inquiries concerning the operation of the Designated Agent;

(4) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(5) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 262.6 or § 262.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) Safeguarding of Confidential Information. The Designated Agent and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Designated Agent or person.

## **§ 262.6 Verification of statements of account.**

(a) General. This section prescribes procedures by which the Designated Agent may verify the royalty payments made by a Licensee.

(b) Frequency of verification. The Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. The Designated Agent must file with the Copyright Office a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the Federal Register a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all parties.

(d) Acquisition and retention of records. The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Designated Agent shall retain the report of the verification for a period of not less than 3 years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards

by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to the Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Designated Agent shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

## **§ 262.7 Verification of royalty payments.**

(a) General. This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty payments made by the Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and the Designated Agent have agreed as to proper verification methods.

(b) Frequency of verification. A Copyright Owner or a Performer may conduct a single audit of the Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. A Copyright Owner or Performer must file with the Copyright Office a notice of intent to audit the Designated Agent, which shall, within 30 days of the filing of the notice, publish in the Federal Register a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Designated Agent. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) Acquisition and retention of records. The Designated Agent shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the

Designated Agent in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

## **§ 262.8 Unclaimed funds.**

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Designated Agent may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

# **PART 263—RATES AND TERMS FOR CERTAIN TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS BY NONCOMMERCIAL LICENSEES**

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[§ 263.1 General.](#)

[§ 263.2 Definitions.](#)

[§ 263.3 Royalty rates and terms.](#)

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Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

Source: 69 FR 5695, Feb. 6, 2004, unless otherwise noted.

## **§ 263.1 General.**

This part 263 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Noncommercial Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Noncommercial Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003-2004.



## § 263.2 Definitions.

For purposes of this part, the following definition shall apply:

A Noncommercial Licensee is a person or entity that has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor, or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make ephemeral recordings for use in facilitating such transmissions, and—

- (a) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);
- (b) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or
- (c) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

## § 263.3 Royalty rates and terms.

A Noncommercial Licensee shall in every respect be treated as a “Licensee” under part 262 of this chapter, and all terms applicable to Licensees and their payments under part 262 of this chapter shall apply to Noncommercial Licensees and their payment, except that a Noncommercial Licensee shall pay royalties at the rates applicable to such a “Licensee,” as currently provided in § 261.3(a), (c), (d) and (e) of this chapter, rather than at the rates set forth in § 262.3(a) through (d) of this chapter.

# PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

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[§ 270.5 Designated collection and distribution organizations for records of use of sound recordings under statutory license.](#)

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Authority: 17 U.S.C. 702.

Source: 69 FR 11527, Mar. 11, 2004, unless otherwise noted.

## **§ 270.1 Notice of use of sound recordings under statutory license.**

(a) General. This section prescribes rules under which copyright owners shall receive notice of use of their sound recordings when used under either section 112(e) or 114(d)(2) of title 17, United States Code, or both.

(b) Definitions. (1) A Notice of Use of Sound Recordings under Statutory License is a written notice to sound recording copyright owners of the use of their works under section 112(e) or 114(d)(2) of title 17, United States Code, or both, and is required under this section to be filed by a Service in the Copyright Office.

(2) A Service is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. For purposes of this section, the definition of a Service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2). A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service, business establishment service or a combination of those:

(i) A preexisting subscription service is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, and was in existence and making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(ii) A preexisting satellite digital audio radio service is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(iii) A nonsubscription transmission service is a service that makes noninteractive nonsubscription digital audio transmissions that are not exempt under section 114(d)(1) of title 17 of the United States Code and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(iv) 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 service or a preexisting satellite digital audio radio service.

(v) A business establishment service is a service that makes ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code and is exempt under section 114(d)(1)(C)(iv) of title 17 of the United States Code.

(c) Forms and content. A Notice of Use of Sound Recordings Under Statutory License shall be prepared on a form that may be obtained from the Copyright Office website or from the Licensing Division, and shall include the following information:

(1) The full legal name of the Service that is either commencing digital transmissions of sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both.

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) The telephone number and facsimile number of the Service.

(4) Information on how to gain access to the online website or homepage of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.

(5) Identification of each license under which the Service intends to operate, including identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service or business establishment service.

(6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral phonorecords of the sound recordings.

(7) Identification of any amendments required by paragraph (f) of this section.

(d) Signature. The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting the sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice and by the date of the signature.

(e) Filing notices; fees. The original and three copies shall be filed with the Licensing Division of the Copyright Office and shall be accompanied by the filing fee set forth in § 201.3(c) of this chapter. Notices shall be placed in the public records of the Licensing Division. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557-6400.

(1) A Service that, prior to April 12, 2004, has already commenced making digital transmissions of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code, or both, and that has already filed an Initial Notice of Digital Transmission of Sound Recordings Under Statutory License, and that intends to continue to make digital transmissions or ephemeral phonorecords following July 1, 2004, shall file a Notice of Use of

Sound Recordings under Statutory License with the Licensing Division of the Copyright Office no later than July 1, 2004.

(2) A Service that, on or after July 1, 2004, commences making digital transmissions and ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first digital transmission of the sound recording.

(3) A Service that, on or after July 1, 2004, commences making only ephemeral phonorecords of sound recordings, shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of a sound recording under the statutory license.

(f) Amendment. A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file has changed, and shall indicate in the space provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

[69 FR 11527, Mar. 11, 2004, as amended at 69 FR 13127, Mar. 19, 2004]

## **§ 270.2 Reports of use of sound recordings under statutory license for preexisting subscription services.**

(a) General. This section prescribes rules under which preexisting subscription services shall serve copyright owners with notice of use of their sound recordings, what the content of that notice should be, and under which records of such use shall be kept and made available.

(b) Definitions. (1) A Collective is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1)(A) or section 114(f)(1)(C)(i) of title 17 of the United States Code and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A Report of Use of Sound Recordings Under Statutory License is the report of use required under this section to be provided by a Service transmitting sound recordings and making ephemeral phonorecords therewith under statutory licenses.

(3) A Service is a preexisting subscription service, as defined in 17 U.S.C. 114(j)(11).

(c) Service. Reports of Use shall be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 114(f)(1)(A) or section 114(f)(1)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f) or pursuant to a settlement agreement reached or statutory license adopted pursuant to section 112(e). Reports of Use shall be served, by certified or registered mail, or by other means if agreed upon by the respective preexisting subscription service and Collective, on or before the forty-fifth day after the close of each month.

(d) Posting. In the event that no Collective is designated under the statutory license, or if all designated Collectives have terminated collection and distribution operations, a preexisting subscription service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Preexisting subscription services shall post their Reports of Use online on or before the forty-fifth day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Preexisting subscription services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Preexisting subscription services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

(2) A “click-wrap” agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the preexisting subscription service providing the Report of Use.

(e) Content . A “Report of Use of Sound Recordings under Statutory License” shall be identified as such by prominent caption or heading, and shall include a preexisting subscription service's “Intended Playlists” for each channel and each day of the reported month. The “Intended Playlists” shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

(1) The name of the preexisting subscription service or entity;

(2) The channel;

(3) The sound recording title;

(4) The featured recording artist, group, or orchestra;

(5) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the preexisting subscription service for purchase of the sound recording);

(6) The marketing label of the commercially available album or other product on which the sound recording is found;

(7) The catalog number;

(8) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(9) Where available, the copyright owner information provided in the copyright notice on the retail album or other product (e.g., following the symbol (P), that is the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual sound recording;

(10) The date of transmission; and

(11) The time of transmission.

(f) Signature. Reports of Use shall include a signed statement by the appropriate officer or representative of the preexisting subscription service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the

preexisting subscription service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(g) Format. Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

- (1) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;
- (2) Carats should surround strings;
- (3) No carats should surround dates and numbers;
- (4) Dates should be indicated by: MM/DD/YYYY;
- (5) Times should be based on a 24-hour clock: HH:MM:SS;
- (6) A carriage return should be at the end of each line; and
- (7) All data for one record should be on a single line.

(h) Confidentiality. Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the preexisting subscription service providing the Report of Use.

(i) Documentation. All compulsory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the preexisting subscription service shall serve upon all designated Collectives and retain for a period of three years from the date of transmission records of use indicating which sound recordings were performed and the number of times each recording was performed, but is not required to produce full Reports of Use or Intended Playlists for those periods.

[69 FR 11527, Mar. 11, 2004, as amended at 70 FR 24310, May 9, 2005]

### **§ 270.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.**

(a) General. This section prescribes rules under which nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services shall maintain reports of use of their sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both.

(b) Definitions. (1) Aggregate Tuning Hours are the total hours of programming that a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service has transmitted during the reporting period identified in paragraph (c)(3) of this section to all listeners within the United States over the

relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription service, preexisting satellite digital audio radio service, new subscription service or business establishment service transmissions, less the actual running time of any sound recordings for which the service has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. For example, if a nonsubscription transmission service transmitted one hour of programming to 10 simultaneous listeners, the nonsubscription transmission service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the nonsubscription transmission service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a nonsubscription transmission service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the nonsubscription transmission service's Aggregate Tuning Hours would equal 10.

(2) An AM/FM Webcast is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

(3) A Collective is a collection and distribution organization that is designated under one or both of the statutory licenses, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to § 251.63(b) of this chapter, or by a decision of a Copyright Arbitration Royalty Panel under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section (f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii) or by order of the Librarian of Congress pursuant to 17 U.S.C. 802(f).

(4) A new subscription service is defined in § 270.1(b)(2)(iv).

(5) A nonsubscription transmission service is defined in § 270.1(b)(2)(iii).

(6) A preexisting satellite digital audio radio service is defined in § 270.1(b)(2)(ii).

(7) A business establishment service is defined in § 270.1(b)(2)(v).

(8) A performance is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey

announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(9) Play frequency is the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the two-week reporting period, then the play frequency is one. If the sound recording is transmitted 10 times during the two-week reporting period, then the play frequency is 10.

(10) A Report of Use is a report required under this section to be provided by a nonsubscription transmission service and new subscription service that is transmitting sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code, or both.

(c) Report of Use —(1) Separate reports not required. A nonsubscription transmission service, preexisting satellite digital audio radio service or a new subscription service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code and makes ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code need not maintain a separate Report of Use for each statutory license during the relevant reporting periods.

(2) Content. For a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code, or the statutory license set forth in section 112(e) of title 17 of the United States Code, or both, each Report of Use shall contain the following information, in the following order, for each sound recording transmitted during the reporting periods identified in paragraph (c)(3) of this section:

(i) The name of the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service making the transmissions, including the name of the entity filing the Report of Use, if different;

(ii) The category transmission code for the category of transmission operated by the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service:

(A) For eligible nonsubscription transmissions other than broadcast simulcasts and transmissions of non-music programming;

(B) For eligible nonsubscription transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming;

(C) For eligible nonsubscription transmissions of non-music programming reasonably classified as news, talk, sports or business programming;



- (D) For eligible nonsubscription transmissions by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by §§ 261.3(a)(2)(i) and (ii) of this chapter;
- (E) For eligible nonsubscription transmissions by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by § 261.3(a)(2)(iii) of this chapter;
- (F) For eligible nonsubscription transmissions by a small webcaster operating under an agreement published in the Federal Register pursuant to the Small Webcaster Settlement Act;
- (G) For eligible nonsubscription transmissions by a noncommercial broadcaster operating under an agreement published in the Federal Register pursuant to the Small Webcaster Settlement Act;
- (H) For transmissions other than broadcast simulcasts and transmissions of non-music programming made by an eligible new subscription service;
- (I) For transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming made by an eligible new subscription service;
- (J) For transmissions of non-music programming reasonably classified as news, talk, sports or business programming made by an eligible new subscription service; and
- (K) For eligible transmissions by a business establishment service making ephemeral recordings;
  - (iii) The featured artist;
  - (iv) The sound recording title;
  - (v) The International Standard Recording Code (ISRC) or, alternatively to the ISRC, the
    - (A) Album title; and
    - (B) Marketing label;
  - (vi) The actual total performances of the sound recording during the reporting period or, alternatively, the
    - (A) Aggregate Tuning Hours;
    - (B) Channel or program name; and
    - (C) Play frequency.
- (3) Reporting period. A Report of Use shall be prepared for a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year. The two weeks need not be consecutive, but both weeks must be completely within the calendar quarter.
- (4) Signature. Reports of Use shall include a signed statement by the appropriate officer or representative of the service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Report, and by the date of the signature.
- (5) Confidentiality. Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, without consent of the service providing the Report of Use.

(6) Documentation. A Service shall, for a period of at least three years from the date of service or posting of a Report of Use, keep and retain a copy of the Report of Use.

## **§ 270.4 Reports of use of sound recordings under statutory license prior to April 1, 2004.**

(a) General. This section prescribes the rules which govern reports of use of sound recordings by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(b) Reports of use . Reports of use filed by preexisting subscription services for transmissions made under 17 U.S.C. 114(f) pursuant to § 270.2 for use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period October 28, 1998, through March 31, 2004, shall serve as the reports of use for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services for their use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(c) Royalty Logic Inc . If, in accordance with § 261.4(c), any Copyright Owners or Performers have provided timely notice to SoundExchange of an election to receive royalties from Royalty Logic, Inc. as a Designated Agent for the period October 28, 1998, through December 31, 2002, or any portion thereof, SoundExchange shall provide to RLI copies of the Reports of Use described in paragraph (b) of this section for that period or the applicable portion thereof.

[69 FR 58262, Sept. 30, 2004]

## **§ 270.5 Designated collection and distribution organizations for records of use of sound recordings under statutory license.**

(a) General. This section prescribes rules under which records of use shall be collected and distributed under section 114(f) of title 17 of the United States Code, and under which records of such use shall be kept and made available.

(b) Definitions. (1) A Collective is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1)(A) or section 114(f)(1)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A Service is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) Notice of Designation as Collective under Statutory License. A Collective shall file with the Licensing Division of the Copyright Office and post and make available online a “Notice of

Designation as Collective under Statutory License,” which shall be identified as such by prominent caption or heading, and shall contain the following information:

- (1) The Collective name, address, telephone number and facsimile number;
- (2) A statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and
- (3) Information on how to gain access to the online website or home page of the Collective, where information may be posted under this part concerning the use of sound recordings under statutory license. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.
- (d) Annual Report. The Collective will post and make available online, for the duration of one year, an Annual Report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.
- (e) Inspection of Reports of Use by copyright owners. The Collective shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner, and the copyright owner's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. The Collective shall render its best efforts to locate copyright owners in order to make available records of use, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.
- (f) Confidentiality. Copyright owners, their agents, and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.
- (g) Termination and dissolution. If a Collective terminates its collection and distribution operations prior to the close of its term of designation, the Collective shall notify the Copyright Office, and all Services transmitting sound recordings under statutory license, by certified or registered mail. The dissolving Collective shall provide each such Service with information identifying the copyright owners it has served.

[69 FR 11527, Mar. 11, 2004, Redesignated at 69 FR 58262, Sept. 30, 2004]

