Copyright Office Regulations Promulgated under the Copyright Act of 1976 and Related Acts

(Chapter II of Title 37, Code of Federal Regulations) and (Part 133 of Title 19, Code of Federal Regulations)

CHAPTER II --COPYRIGHT OFFICE, LIBRARY OF CONGRESS

SUBCHAPTER A --COPYRIGHT OFFICE AND PROCEDURES

PART 201 --GENERAL PROVISIONS

AUTHORITY: *17 U.S.C. 702.*

§ 201.1 Communications with the Copyright Office.

(a) *General purpose addresses*. 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.

(1) In general. Mail and other communications shall be addressed to the Register of Copyrights, 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,* 114, 115, 118, 119 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 should be addressed to the Certifications and Documents Section, LM-402, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6302.

(4) Search of records. Requests for searches of registrations and recordations in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Reference and Bibliography Section, LM-450, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6306.

(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; comments for rulemaking proceedings; requests for Copyright Office speakers; requests for approvals of computer generated application forms; requests for expedited service from either the Certifications and Documents Section or Reference and Bibliography 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, Southwest Station, Washington, DC 20024-0400.

(2) Copyright Arbitration Royalty Panels (CARPs). CARP claims, filings, and general CARP correspondence should be mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

(c) *Copies of records or deposits.* Requests for copies of records or deposits should be addressed to the Library of Congress, Copyright Office, Certifications and Documents Section, LM-402, 101 Independence Avenue, SE, Washington, DC 20559-6000.

(d) *Search of records.* Requests for searches of registrations and recordations in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Library of Congress, Copyright Office, Reference and Bibliography Section, LM-450, 101 Independence Avenue, SE, Washington, DC 20559-6000.

Legislative History

[*50 FR 30170,* July 24, 1985; *60 FR 34168,* June 30, 1995; *62 FR 35420, 35421,* July 1, 1997, as corrected at *62 FR 40457,* July 29, 1997; *64 FR 36574,* July 7, 1999; *65 FR 39818,* June 28, 2000; *66 FR 34372,* June 28, 2001]

§ 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 Certifications and Documents 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 Maintenance Unit, LM B-14, 8:30 a.m. to 5:00 p.m., 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 Reference 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 Certifications and Documents 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 Public Information Office, 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, Southwest Station, Washington, DC 20024.

(6) In no case will direct public access be permitted to any financial or accounting records.

(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 Certifications and Documents 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 return unanswered any abusive or scurrilous correspondence.

(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 Certifications and Documents 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.

Legislative History

[*50 FR 30170,* July 24, 1985, as amended at *51 FR 30062,* Aug. 22, 1986; *62 FR 35420, 35421,* July 1, 1997; *64 FR 29518, 29520,* June 1, 1999]

§ 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)(10).

(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:

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

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

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Legislative History

[*64 FR 29518, 29520,* June 1, 1999; *64 FR 36574,* July 7, 1999; *65 FR 39818, 39819,* June 28, 2000; *67 FR 38003, 38005,* May 31, 2002]

§ 201.4 Recordation of transfers and certain other documents.

(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 *(17 U.S.C. 111*(d); see *37 CFR 201.11*; 201.17);

(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 reproduced in legible microform copies.

(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.

Legislative History

[*43 FR 35044,* Aug. 8, 1978, as amended at *53 FR 123,* Jan. 5, 1988; *56 FR 59885,* Nov. 26, 1991; *64 FR 29518, 29521,* June 1, 1999; *65 FR 39818, 39819,* June 28, 2000; *67 FR 69134, 69136,* Nov. 15, 2002]

§ 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.n1

(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 Public Information Office, 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.

Legislative History

[*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 35420, 35421,* July 1, 1997; *63 FR 59235, 59236,* Nov. 3, 1998; as corrected and amended at *63 FR 66041, 66042,* Dec. 1, 1998; *64 FR 29518, 29521,* June 1, 1999; *65 FR 39818, 39819,* June 28, 2000; *65 FR 48913, 48914,* Aug. 10, 2000; *66 FR 34372,* June 28, 2001]

§ 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.* Persons or firms having a considerable amount of business with the Copyright Office may, for their own convenience, prepay copyright expenses by establishing a Deposit Account.

(c) *Refunds.* Money remitted to the Copyright Office for original, basic, supplementary or renewal registration 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 statutory 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. Before making any refund for fees remitted in relation to nonregistration 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 fee set by statute for the service.

(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.

Legislative History

[*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]

§ 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.

Legislative History

[*50 FR 40835,* Oct. 7, 1985; *60 FR 34168,* June 30, 1995; *65 FR 39818, 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 Receiving & Processing Division, Copyright Office, and if delivered by hand they should be brought to the Copyright Office Public Information Office, 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, Receiving & Processing Division, P.O. Box 71380, Washington, DC 20024-1380.

Legislative History

[*66 FR 62942, 62944,* Dec. 4, 2001, as corrected at *66 FR 63920,* Dec. 11, 2001]

§ 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.

Legislative History

[*42 FR 16777,* Mar. 30, 1977, as amended at *46 FR 33249,* June 29, 1981; *56 FR 59885,* Nov. 26, 1991; *64 FR 29518, 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) If the termination is made under section 304(d), a statement to that effect;

(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 elswhere 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.

(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) 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.

Legislative History

[*42 FR 45920,* Sept. 13, 1977, as amended at *56 FR 59885,* Nov. 26, 1991; *60 FR 34168,* June 30, 1995; *64 FR 29518, 29521,* June 1, 1999; *64 FR 36574,* July 7, 1999; *66 FR 34372,* June 28, 2001; *67 FR 69134, 69136,* Nov. 15, 2002; *67 FR 78176,* Dec. 23, 2002]

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions for private home viewing.

(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) of ttle 17 of the United States Code, as amended by Pub. L. 103-369, 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,T1 private home viewing, satellite carrier, subscriber, superstation*, and *unserved household* have the meanings set forth in section 119(d) of title 17 of the United States Code, as amended by Pub. L. 103-369.

(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 "superstation" 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 "Superstations," followed by:

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

(ii) The total number of subscribers to each superstation for each month of the period covered by the Statement. This number is the number of subscribers to each superstation 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 superstation 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.* All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

(g) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (g)(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 (g)(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 (g)(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 (g)(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 (g)(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 (g) must be accompanied by a filing fee in the amount of $ 15 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 (g) 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 (g) 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 (g)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (g) 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.

(h) *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 occurring within that accounting period. The accrual period will end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by a satellite carrier, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period will end on the date of 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).

Legislative History

[*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 57935, 57937,* Nov. 24, 1995; *63 FR 30634, 30635,* June 5, 1998; *64 FR 36574,* July 7, 1999]

§ 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.

Legislative History

[*42 FR 53961,* Oct. 4, 1977, as amended at *56 FR 59885,* Nov. 26, 1991; *64 FR 29518, 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.

Legislative History

[*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.

Legislative History

[*42 FR 59265,* Nov. 16, 1977]

§ 201.15 [Reserved]

[Reserved]

[Editor's Note: This section was removed and reserved by *66 FR 34372, 34373* (June 28, 2001). Prior to removal, this section read as follows:

§ 201.15 Voluntary license to permit reproduction of nondramatic literary works solely for use of the blind and physically handicapped.

(a) General. *(1) The* blind and physically handicapped *are persons eligible for special loan services of the Library of Congress, as designated by section 135a of Title 2 of the United States Code as amended by Pub. L. 89-552 and regulations of the Library of Congress issued under that section.*

(2) *This section, and any license granted or exercised under this section, applies only to nondramatic literary works that have previously been published with the consent of the copyright owner.*

(b) *Form.* The Copyright Office provides the following form as part of the applications for registration of claims to copyright in nondramatic literary works (Form TX):

Reproduction for Use of Blind or
Physicallly Handicapped Persons

Signature of this form at space 10, and a check in one of the boxes here in space 8, constitutes a nonexclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work

identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

a [ ] Copies and phonorecords; b [ ] Copies only; c [ ] Phonorecords only.

(c) *Terms and conditions.* A copyright owner who consents to the use of a copyrighted work by the Library of Congress for the use of the blind and physically handicapped may accomplish this purpose by checking the appropriate box on the application form, by signing the application form as a whole, and by submitting the application for copyright registration to the Copyright Office. The copyright owner thereby grants a nonexclusive license to the Library of Congress with respect to the work identified in the application, under the terms and conditions set forth in this section.

(1) *The work may be reproduced only by or on behalf of the Library of Congress.*

(2) *The work may not be reproduced in any other form than Braille (or similar tactile symbols), or by a fixation of a reading of the work in phonorecords specifically designed for use of the blind and physically handicapped, or both, as designated by the copyright owner on the application form.*

(3) *Such copies and phonorecords of the work may be distributed by the Library of Congress solely for the use of the blind and physically handicapped under conditions and guidelines provided by the National Library Service for the Blind and Physically Handicapped of the Library of Congress.*

(4) *In the case of any conflict with any other right or license given by the copyright owner to the Library of Congress pertaining to the work, the terms and conditions most favorable to the Library of Congress for the benefit of the blind and physically handicapped shall govern.*

(5) *Copies and phonorecords reproduced and distributed under this license will contain identification of the author and publisher of the work, and copyright notice, as they appear on the copies or phonorecords deposited with the application.*

(6) *This license is nonexclusive, and the copyright owner is in no way precluded from granting other nonexclusive licenses with respect to reproduction for the use of the blind and physically handicapped, or exclusive licenses for the same purpose on condition they are subject to the nonexclusive license granted to the Library of Congress, or other exclusive or nonexclusive licenses or transfers with respect to reproduction or distribution for other purposes.*

(7) *All responsibility for the clearing and exercise of the rights granted is that of the Library of Congress.*

(d) *Duration of license.* (1) The license is effective upon the effective date of registration for the work and, subject to the conditions and procedures stated in paragraph (d)(2) of this section, continues for the full term of copyright in the work provided in section 302 of Title 17 of the United States Code as amended by Pub. L. 94-553.

(2) *Termination of the license may be accomplished by the copyright owner at any time by submitting a written statement of intent to terminate, signed by the copyright owner or by the duly authorized agent of the copyright owner, to the National Library Service for the Blind and Physically Handicapped of the Library of Congress. Termination will become effective 90 days after receipt of the written statement, or at a later time set forth in the statement. Upon the effective date of termination the Library of Congress will be prohibited from reproducing additional copies or phonorecords of the work, or both, without the consent of the copyright owner, but copies or phonorecords, or both, reproduced under authority of the license before the effective date of termination may continue to be utilized and distributed under the terms of the license after its termination.*]

Legislative History

[*45 FR 13073,* Feb. 28, 1980; *60 FR 34168,* June 30, 1995; *66 FR 34372, 34373,* June 28, 2001]

§ 201.16 [Reserved]

[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 Coypright 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,* and *noncommercial educational station* have the meanings set forth in section 111(f) of title 17 of the United States Code, as amended by Pub. L. 94-553 and Pub. L. 103-369.

(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 $ 379,600; and

(ii) Form SA3 -- "Long Form" for use by cable systems whose semiannual gross receipts for secondary transmission total $ 379,600 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 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.

(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) The information indicated by paragraph (e)(9), subclauses (v) and (vi) 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.

(viii) 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 $ 98,600 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 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) 0.956 of 1 percent of the system's gross receipts from all subscribers, whichever is larger.

(h) *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.

(i) *Royalty fee payment.* (1) All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

(2) 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 underpayments of royalties for the cable compulsory license occurring within that accounting period. The accrual period shall end on the date appearing on the certified check, cashier's check, money order or electronic payment submitted by a cable system, provided that such payment is received by the Copyright Office within five business days of that date. 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 actual receipt by the Copyright Office.

(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. Cable operators 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 201.17(i)* in effect on June 30, 1992.

(iii) 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).

(j) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (j)(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 (j)(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 (j)(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 (j)(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 (j)(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 (j)(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 (j)(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 (j) (except those filed under subparagraph (1)(iii) of this paragraph) must be accompanied by a filing fee in the amount of $ 15 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 (j), 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 (j) 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 (j)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (j) 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.

(k) *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.

Legislative History

[*43 FR 27832,* June 27, 1978; *51 FR 599, 30216, 45112 (1986); 52 FR 28253 (1987); 54 FR 14221 (1989); 55 FR 49999 (1990); 56 FR 7813, 29589 (1991); 57 FR 3296,* Jan. 29, 1992; *57 FR 61834 (1992); 58 FR 40363,* July 28, 1993; *58 FR 45263,* Aug. 27, 1993; *59 FR 67635,* Dec. 30, 1994; *60 FR 34168,* June 30, 1995; *60 FR 57935, 57937,* Nov. 24, 1995; *62 FR 18705, 18710,* Apr. 17, 1997; *62 FR 23360, 23362,* Apr. 30, 1997; *63 FR 30634, 30635,* June 5, 1998; *63 FR 39737, 39738,* July 24, 1998; *64 FR 36574,* July 7, 1999; *65 FR 64622, 64623,* Oct. 30, 2000; *66 FR 34372, 34373,* June 28, 2001]

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

(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, to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A separate Notice of Intention shall be served or filed for each nondramatic musical work embodied, or intended to be embodied, in phonorecords made under the compulsory license.

(3) 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. In such cases, the service of a Notice of Intention on any one of the co-owners under paragraph (e)(2) of this section shall be sufficient with respect to all co-owners.

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

(c) *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 full address, including a specific number and street name or rural route, of the place of business of the person or entity intending to obtain the compulsory license. 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) A statement of the nature of each and every business organization that the person or entity intending to obtain the compulsory license will use for the purpose of conducting the business of making and distributing phonorecords under the license (for example, a corporation, a partnership, or an individual proprietorship); additionally:

(A) If the person or entity intending to obtain the compulsory license is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall so state.

(B) If the person or entity intending to obtain the compulsory license is a corporation that is not registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation.

(C) In all other cases, the Notice shall include the names of each entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity intending to exercise the compulsory license. If a corporate entity is named in response to this paragraph (C), then: If that corporation is registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall so state; if that corporation is not so registered, the Notice shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of that corporation;

(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) The title of the nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license, and the names of the author or authors of such work if known;

(vi) 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);

(vii) The expected date of initial distribution of phonorecords already made (if any) or expected to be made under the compulsory license;

(viii) 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;

(ix) 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

(x) In the case of phonorecords already made (if any) under the compulsory license, the date or dates of such manufacture.

(2) A "clear statement" of the information listed in paragraph (c)(1) of this section requires a clearly intelligible, legible, and unambiguous statement in the Notice itself and (subject to paragraph (c)(1)(iii)(A) of this section) without incorporation by reference of facts or information contained in other documents or records.

(3) Where information is required to be given by paragraph (c)(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.

(d) *Signature.* The Notice shall be signed by the person or entity intending to obtain the compulsory license. If that person or entity is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that person or entity is a partnership, the signature shall be that of a partner. The signature shall be accompanied by the printed or typewritten name of the person signing the Notice, and by the date of signature.

(e) *Filing and service.* (1) If, with respect to the nondramatic musical work named in the Notice of Intention, the registration 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 shall be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in § 201.3(e). 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 a proper Notice and fee are both received in the Copyright Office. A written acknowledgement of receipt and filing will be provided to the sender. Upon request and payment of the fee specified in § 201.3(e), a Certificate of Filing will be provided to the sender.

(2) If the registration or other public records of the Copyright Office do identify the copyright owner of the nondramatic musical work named in the Notice of Intention and include an address for such owner, the Notice shall be served on such owner by certified mail or by registered mail sent to 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.

(3) If the Notice is sent by certified or registered mail to the last address for the copyright owner shown by the records of the Copyright Office and 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 (e)(3) shall be submitted to the Licensing Division of the Copyright Office, and 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 by appropriate evidence that it was sent by certified or registered mail to that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, as shown by the evidence mentioned above, as the date of filing. A written acknowledgement of receipt and filing will be provided to the sender. No filing fee will be required in the case of Notices filed under this paragraph (e)(3). Upon request and payment of the fee specified in § 201.3(e), a Certificate of Filing will be provided to the sender.

Legislative History

[*45 FR 79045,* Nov. 28, 1980, as amended at *56 FR 59885,* Nov. 26, 1991; *63 FR 30634, 30635,* June 5, 1998; *64 FR 29518, 29521,* June 1, 1999; *64 FR 36574,* July 7, 1999; *64 FR 41286, 41288,* July 30, 1999]

§ 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, and required by that section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) An *Annual Statement of Account* is a statement identified in section 115(c)(5) of Title 17 of the United States Code, 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, the term *copyright owner*, in the case of any work having more than one copyright owner means any one of the co-owners. In such cases, the service of a Statement of Account, on one co-owner under paragraph (e)(7) or (f)(7) of this section shall be sufficient with respect to all co-owners.

(4) 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.

(5) 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.

(6) Except as provided in paragraph (a)(5), 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.

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

(8) 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.

(9) 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.

(10) 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.

(11) 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 subparagraph (B) of this § 201.19(a)(5)(iii), 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 subparagraph (B) of this § 201.19(a)(5)(iii), 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)(7) 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 § 201.19(a)(4), 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 Principles. 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 FOFI, 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 to whom or which it is directed, together with the total royalty for the month covered by the Monthly Statement, by certified mail, or by registered mail on or before the 20th day of the immediately succeeding month. 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 certified mail or registered mail and is returned to the sender because the copyright owner 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 Monthly Statement of Account, together with any evidence of mailing, 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 acknowledgement 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 § 202.19(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 § 201.19(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.

(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) A statement of the nature of the business organization used by the compulsory licensee in connection with the making and distribution of phonorecords (for example, a corporation, a partnership, or an individual proprietorship); additionally:

(A) If the compulsory licensee is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall state that this is the case.

(B) If the compulsory licensee is a corporation that is not registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation.

(C) In all other cases, the Annual Statement shall include the names of each entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity exercising the compulsory license. If a corporate entity is named in response to this paragraph (C), then: If that corporation is registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall so state; if that corporation is not so registered, the Annual Statement shall include a list of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of that corporation;

(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 (A) through (F) of this § 201.19(f)(4)(i) 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 [subject to paragraph (f)(3)(iii)(A)] 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 to whom or which it is directed by certified mail or by registered mail on or before the twentieth 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 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 certified mail or registered mail and is returned to the sender because the copyright owner 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, 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 § 202.19(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.

(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.

Legislative History

[*45 FR 79046,* Nov. 28, 1980, as amended at *56 FR 7813,* Feb. 26, 1991; *56 FR 59885,* Nov. 26, 1991; *63 FR 30634, 30635,* June 5, 1998; *64 FR 29518, 29521,* June 1, 1999; *64 FR 36574,* July 7, 1999; *64 FR 41286, 41289,* July 30, 1999; *66 FR 34372, 34373,* June 28, 2001]

§ 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,n1 each of the following constitute examples of acceptable methods of affixation and position of notice:

(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.

Legislative History

[*46 FR 58312,* Dec. 1, 1981; *66 FR 34372, 34373,* June 28, 2001]

AUTHORITY: *17 U.S.C. 401,* 702

§ 201.21 [Reserved]

[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.

Legislative History

[*46 FR 28849,* May 29, 1981; *63 FR 66041, 66042,* Dec. 1, 1998; *66 FR 34372, 34373,* June 28, 2001]

Authority: *17 U.S.C. 411,* 702

§ 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.

Legislative History

[*45 FR 41414,* June 19, 1980]

Authority: *17 U.S.C. 702,* 704

§ 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.

Legislative History

[*56 FR 7812,* Feb. 26, 1991; *66 FR 34372, 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 x 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 x 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 x 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 x 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.

Legislative History

[*56 FR 38341,* Aug. 13, 1991; *64 FR 29518, 29521,* June 1, 1999; *65 FR 39818, 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.

Legislative History

[*58 FR 29107,* May 19, 1993; *60 FR 34168,* June 30, 1995; *64 FR 29518, 29522,* June 1, 1999; *65 FR 39818, 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 minidiscs (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. A fee of $ 20 payable by personal or company check to the Register of Copyrights shall accompany any Amendment permitted by paragraph (f) of this section.

Legislative History

[*57 FR 55465,* Nov. 25, 1992; *64 FR 36574, 36575,* July 7, 1999]

§ 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 minidiscs (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 of the 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.

(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) *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.

(h) *Corrections, supplemental payments, and refunds* -- (1) *General.* Upon compliance with the procedures and within the time limits set forth in this paragraph (h), 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 (h)(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 (h)(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 of $ 20 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 (h) 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.

(i) *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.

(j) *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 occurring within that accounting period. The accrual period for interest shall end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by the manufacturing or importing party, if the payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period shall end on the date of 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.

(k) *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).

Legislative History

[*58 FR 9546,* Feb. 22, 1993; *59 FR 4589,* Feb. 1, 1994; *64 FR 36574, 36575,* July 7, 1999; *65 FR 48913, 48914,* Aug. 10, 2000]

§ 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-458, 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 paticular 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.

Legislative History

[*60 FR 25998,* May 16, 1995; *63 FR 30634, 30635,* June 5, 1998; *64 FR 36574, 36575,* July 7, 1999]

§ 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.

Legislative History

[*61 FR 30808, 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 _____ and (insert Mexico or Canada) 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 Section 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.

Legislative History

[*59 FR 12164,* Mar. 16, 1994; *59 FR 58789,* Nov. 15, 1994; *60 FR 50414, 50420,* Sept. 29, 1995; *66 FR 34372, 34373,* June 28, 2001]

§ 201.32 [Reserved]

[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 a 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 of 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, Southwest Station, Washington, D.C. 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 30 U.S. dollars for notices covering one work. For notices covering multiple works as described in paragraph (d)(4) of this section, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work. For example, the fee for a Notice of Intent to Enforce covering three works would be 32 U.S. dollars. This fee includes the cost of an acknowledgement of recordation.

(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 or the numeric address 140.147.254.3, or (iii) telnet to 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.

(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 URUQUAY ROUND AGREEMENTS ACT (URAA)

Click here to view image.

Legislative History

[*60 FR 50414, 50420,* Sept. 29, 1995; *63 FR 30634, 30635,* June 5, 1998; *64 FR 12902,* Mar. 16, 1999]

§ 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, Southwest Station, 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 30 U.S. dollars for each Correction Notice covering one work. For single Correction NIEs covering multiple works, that is, for works by the same author and owned by the same copyright owner or owner of an exclusive right, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work.

(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; 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

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Legislative History

[*62 FR 55736, 55739,* Oct. 28, 1997]

§ 201.35 Initial Notice of Digital Transmission of Sound Recordings under Statutory License.

(a) *General.* This section prescribes rules under which copyright owners shall receive initial notice of use of their sound recordings under statutory license under section 114(f) of title 17 of the United States Code.

(b) *Definitions.* (1) An *Initial Notice of Digital Transmission of Sound Recordings under Statutory License* is a notice to sound recording copyright owners of the use of their works under section 114(f), and required under this regulation to be filed by a Service in the Copyright Office.

(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, and includes, without limitation, any 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).

(c) *Forms.* A suggested format for the Initial Notices may be found on the Copyright Office website.

(d) *Content.* An "Initial Notice of Digital Transmission of Sound Recordings under Statutory License" shall be identified as such by prominent caption or heading, and shall include the following:

(1) The full legal name of the Service commencing digital transmission of sound recordings under statutory license;

(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; and

(4) Information on how to gain access to the online website or home page of the Service, or where information may be posted under these regulations concerning the use of sound recordings under statutory license.

(e) *Signature.* The Initial Notice shall include the signature of the appropriate officer or representative of the Service transmitting sound recordings under statutory license. 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) *Filing.* A Service shall file the Initial Notice with the Licensing Division of the Copyright Office prior to the first transmission of sound recordings under the license, or by September 3, 1998, in the case of a Service that makes subscription transmissions before or on that date, or by December 1, 1999, in the case of a Service that makes eligible nonsubscription transmissions before, or on, that date. Each Notice shall be accompanied by a filing fee of $ 20. Initial Notices and amendments will be placed in the public records of the Licensing Division of the Copyright Office, and posted online where they will be accessible through the Copyright Office website. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, D.C. 20557-6400.

(g) *Amendments.* A Service shall file with the Licensing Division of the Copyright Office an amendment reporting a change in the information reported in the Initial Notice within 45 days of the change. An amendment shall be accompanied by a fee of $ 20, and shall:

(1) Be clearly and prominently identified as "An Amendment to an Initial Notice of Digital Transmission of Sound Recordings under Statutory License";

(2) Identify the specific Initial Notice intended to be amended, by Service name and filing date, so that it may be readily located in the records of the Copyright Office;

(3) Clearly specify the nature of the amendment to be made; and

(4) Be signed and dated in accordance with this section.

Legislative History

[*63 FR 34289, 34296,* June 24, 1998; *64 FR 36574, 36575,* July 7, 1999; *64 FR 49670, 49671,* Sept. 14, 1999; *64 FR 50758, 50759,* Sept. 20, 1999; *64 FR 66391, 66392,* Nov. 26, 1999; *65 FR 39818, 39819,* June 28, 2000; *65 FR 77292, 77301,* Dec. 11, 2000]

§ 201.36 Reports of Use of Sound Recordings under Statutory License.

(a) *General.* This section prescribes rules under which 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) 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 a report required under this regulation to be provided by the Service transmitting sound recordings under statutory license.

(3) 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) *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). Reports of Use shall be served, by certified or registered mail, or by other means if agreed upon by the respective Service and Collective, on or before the twentieth day after the close of each month, commencing with the month succeeding the month in which these regulations become effective.

(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 Service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. 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. 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 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 Service's "Intended Playlists" for each channel and each day of the reported month.

(1) 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:

(i) The name of the service or entity;

(ii) The channel;

(iii) The sound recording title;

(iv) The featured recording artist, group, or orchestra;

(v) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);

(vi) The recording label;

(vii) The catalog number;

(viii) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(ix) The date of transmission; and

(x) The time of transmission.

(2) The Report of Use shall include a report of any system failure resulting in a deviation from the Intended Playlists of scheduled sound recordings. Such report shall include the date, time and duration of any such system failure.

(f) *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 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

(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 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 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.

Legislative History

[*63 FR 34289, 34296,* June 24, 1998; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39818, 39819,* June 28, 2000]

§ 201.37 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 these regulations 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, S.E., Washington, D.C. 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.

Legislative History

[*63 FR 34289, 34297,* June 24, 1998; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39818, 39819,* June 28, 2000]

§ 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 Public Information Office of the Copyright Office, 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, Southwest Station, Washington, DC 20024. Each designation shall be accompanied by a filing fee of $ 30. 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 Public Information Office of the Copyright Office an amended Interim Designation of Agent to Receive Notification of Claimed Infringement, containing the current information required by section 201.38(c). The amended Interim Designation shall be signed in accordance with the requirements of section 201.38(d) and shall be accompanied by a fee of $ 30.

(g) *Termination and dissolution.* If a service provider terminates its operations, the entity shall notify the Copyright Office by certified or registered mail.

Legislative History

[*63 FR 59233, 59234,* Nov. 3, 1998; *67 FR 38003, 38005,* May 31, 2002]

§ 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 1/2x11 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 Public Information Office, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC.

(2) *Amount.* Each Notice shall be accompanied by a filing fee of $ 50, and (if more than one work is identified in the Notice), $ 20 for each additional work.

(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

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Appendix B to § 201.39 -- Required Format for Continuation Sheet

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Legislative History

[*63 FR 71785, 71787,* Dec. 30, 1998; *66 FR 34372, 34373,* June 28, 2001]

§ 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 two classes of copyrighted works shall be subject to the exemption found in *17 U.S.C. 1201*(a)(1)(B) from 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) for the period from October 28, 2000 to October 28, 2003. The exempted classes of works are:

(1) Compilations consisting of lists of websites blocked by filtering software applications; and

(2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

Legislative History

[*65 FR 64556, 64574,* Oct. 27, 2000]

PART 202 --REGISTRATION OF CLAIMS TO COPYRIGHT

AUTHORITY: *17 U.S.C. 408,* 702.

§ 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.

Legislative History

[*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 (c), or, in the case of a sound recording, the symbol (c); 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.

Legislative History

[*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 34372, 34373,* June 28, 2001, as corrected at *66 FR 40322,* Aug. 2, 2001]

§ 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.n1

(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)(3) 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) *Application forms.* For the purpose of registration, The Register of Copyrights has prescribed the basic forms to be used for all applications submitted on and after January 1, 1978. Each form corresponds to a class set forth in paragraph (b)(1) of this section and is so designated ("Form TX"; "Form PA"; "Form VA"; "Form SR"; "Form SE"; and "Form SE/Group"). Copies of the forms are available free upon request to the Public Information Office, Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, DC 20559-6000. 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 claimedn2 the application shall be submitted on Form SR.

(3) *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)(3) through (b)(8) 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.

(4) *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 TX, 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;

(B) The appropriate filing fee, as required in § 201.3(c); and

(C) The deposit required by § 202.20(c)(2)(vii)(D).

(5) *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 Library of Congress, Group Periodicals Registration, Washington, D.C. 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 group registration of serials under section 408(c)(1) of title 17 and this subsection, the following items must be sent together in the same package:

(A) A completed Form SE/Group, giving the requested information.

(B) The appropriate filing fee, as required in § 201.3(c) for each issue covered by the group registration.

(C) A deposit consisting of one complete copy of the best edition of each issue included in the group registration.

(6) *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.

(7) *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;n3

(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 consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published.

(ii) An application for group registration under section 408(c)(2) of title 17 and paragraph (b)(7) of this section shall consist of:

(A) A basic application for registration on Form TX, Form PA, or Form VA,n4 which shall contain the information required by the form and its accompanying instructions;

(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)(7)(i)(E) of this section.

(8) *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.

(9) *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., January 1-December 31, 2001) must be provided in space 3b of the application, and the date of publication of each photograph within the group must be identified either on the deposited image or on a continuation sheet, in such a manner that for each photograph in the group, the date of publication can be identified. A special continuation sheet for registration of a group of photographs shall be made available by the Copyright Office.

(v) 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)(9)(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.

(vi) The deposit(s) and application must be accompanied by the fee set forth in § 201.3(c) of this chapter for a basic registration.

(vii) 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").

(viii) 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").

(ix) 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).

(10) *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;n5

(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 on the appropriate form prescribed by the Register of Copyrights under paragraph (b) of this section, and shall be accompanied by the appropriate filing fee, as required in § 201.3(c), and the deposit required under *17 U.S.C. 408* and § 202.20 of these regulations.n6 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 designation of whether the applicant is the author of, or other copyright claimant or owner of exclusive rights in, the work, or the duly authorized agent of such author, other claimant, or owner (whose identity shall also be given);

(ii) the handwritten signature of such author, other claimant, owner, or agent, accompanied by the typed or printed name of that person;

(iii) a declaration that the statements made in the application are correct to the best of that person's knowledge; and

(iv) the date of certification.

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.

Legislative History

[*43 FR 966,* Jan. 5, 1978; as amended at *54 FR 13181,* Mar. 31, 1989; *54 FR 21059,* May 16, 1989; *55 FR 50557,* Dec. 7, 1990; *56 FR 7813, 7815* Feb. 26, 1991; *56 FR 27197,* June 13, 1991; *56 FR 59885,* Nov. 26, 1991; *56 FR 65190,* Dec. 16, 1991; *57 FR 39616,* Sept. 1, 1992; *58 FR 17778,* Apr. 6, 1993; *60 FR 15875,* Mar. 28, 1995; *60 FR 34168,* June 30, 1995; *62 FR 35420, 35421,* July, 1997; *62 FR 63657,* Dec. 2, 1997; *62 FR 66822,* Dec. 22, 1997; *64 FR 29518, 29522,* June 1, 1999; *64 FR 29522, 29523,* June 1, 1999; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39818, 39819,* June 28, 2000; *66 FR 34372, 34373,* June 28, 2001; *66 FR 37142, 37149,* July 17, 2001]

§ 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.

Legislative History

[*55 FR 50001,* Dec. 4, 1990]

§ 202.5-202.9 [Reserved]

[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.

(c) [Redesignated as paragraph (b). See *60 FR 15606,* Mar. 24, 1995.]

Legislative History

[*46 FR 33249,* June 29, 1981; *60 FR 15605, 15606,* Mar. 24, 1995, as corrected at *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 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, cloverleafs, 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.* 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.

Legislative History

[*57 FR 45310,* Oct. 1, 1992]

§ 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 registering a copyright claim in a restored work under section 104A, as amended, may be submitted to the Copyright Office on or after January 1, 1996. The application, filing fee, and deposit should be sent in a single package to the following address: Library of Congress, Copyright Office, 101 Independence Avenue S.E., Washington, D.C. 20559-6000.

(2) *GATT forms.* Application for registration for single works restored to copyright protection under URAA should be made on Form GATT. Application for registration for a group of works published under a single series title and published within the same calendar year should also be made on Form GATT. Application for a group of at least two and up to ten individual and related works as described in paragraph (c)(5)(ii) of this section should be made on Form GATT/GRP. GATT/URAA forms may be obtained by writing or calling the Copyright Office Hotline at (202) 707-9100. In addition, legible photocopies of these forms are acceptable if reproduced on good quality, 8 1/2 by 11 inch white paper, and printed head to head so that page two is printed on the back of page one.

(3) *Fee* -- (i) *Amount.* The filing fee for registering a copyright claim in a restored work is 30 U.S. dollars. The filing fee for registering a group of multiple episodes under a series title under paragraph (c)(5)(i) of this section is also $ 30. The filing fee for registering a group of related works under paragraph (c)(5)(ii) of this section is 10 U.S. dollars per individual work, with a minimum fee of US$ 30.

(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 Section of the Examining Division for delivery instructions. The telephone number is: (202) 707-6040; the telefax number is: (202) 707-1236.

(5) *Group registration.* Copyright claims in more than one restored work may be registered as a group in the following circumstances:

(i) *Single series title.* Works published under a single series title in multiple episodes, installments, or issues during the same calendar year may be registered as a group, provided the owner of U.S. rights is the same for all episodes, installments, or issues. The Form GATT should be used and the number of episodes or installments should be indicated in the title line. The filing fee for registering a group of such works is $ 30. In general, the deposit requirements applicable to restored works will be applied to the episodes or installments in a similar fashion. In the case of a weekly or daily television series, applicants should first contact the Performing Arts Section of the Examining Division. The telephone number is (202) 707-6040; the telefax number is (202) 707-1236.

(ii) *Group of related works.* A group of related works may be registered on the Form GATT/GRP, provided the following conditions are met: the author(s) is the same for all works in the group; the owner of all United States rights is the same for all works in the group; all works must have been published in the same calendar year; all works fit within the same subject matter category, i.e., literary works, musical works, motion pictures, etc.; and there are at least two and not more than ten individual works in the group submitted. Applicants registering a group of related works must file for registration on the Form GATT/GRP. The filing fee for registering a group of related works is ten dollars per individual work, with a minimum fee of $ 30.

(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.

Legislative History

[*60 FR 50414, 50422,* Sept. 29, 1995; *64 FR 12902,* Mar. 16, 1999; *64 FR 29518, 29522,* June 1, 1999]

§ 202.13-202.16 [Reserved]

[Reserved]

§ 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Public Law 102-307 and Pub. L. 105-298.

(b) *Definition.* 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.

(c) *Renewal registration optional.* For works originally copyrighted between January 1, 1964 and December 31, 1977 renewal registration is optional and not a condition for securing copyright for the new and extended sixty-seven year second term. As provided in Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992), however, renewal of copyright by registration during the last year of the original term and renewal registration during the sixty-seven year extended term of a copyright renewed without registration by operation of Public Law 102-307 differ in legal effect. Among other effects, renewal of copyright by registration during the last year of the original term vests the renewal copyright in the statutory renewal claimant(s) living on the date of registration.

(d) *Original term registration.* (1) Registration of a claim to copyright in the original twenty-eight year term is not a pre-condition for making a renewal registration, provided the renewal application is accompanied by an Addendum to Form RE and the deposit copy, phonorecord, or identifying material specified in paragraph (h) of this section.

(2) Original term registration can only be made before the expiration of the original term of copyright in the work.

(e) *Renewal time limits.* (1) For works originally copyrighted between January 1, 1964, and December 31, 1977, claims to renewal copyright may be registered within the last year of the original term, which begins on December 31 of the 27th year of the copyright, and runs through December 31 of the 28th year of the copyright, or at anytime during the extended sixty-seven year second term, if the second term is renewed by operation of Public Law 102-307, 106 Stat. 264. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. To vest the renewal copyright by registration, the required renewal application, fee, and, if original term registration has not been made, the Addendum specified in paragraph (h) of this section must be received in the Copyright Office during the prescribed period before the first term of copyright expires. The Copyright Office has no discretion to extend the renewal time limits for vesting of the renewal copyright by registration.

(2) The provisions of paragraph (e)(1) of this section are subject to the following qualification: In order to vest the renewal copyright by registration in any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal, which is intended to vest the renewal copyright by registration, and any accompanying Addendum relating to subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by *17 U.S.C. 304*(a) for vesting of the renewal copyright by registration, he or she may apply for renewal registration by telegraphic, telefacsimile, or similar written communication. An application made by this method will be accepted only if:

(i) The message is received in the Copyright Office within the specified time limits for vesting by registration;

(ii) The applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim;

(iii) The fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and

(iv) A formal application for renewal (Form RE) (or a fax copy) and in the case of works under paragraph (h) of this section, an accompanying Addendum relating to the subsistence of first-term copyright are also received in the Copyright Office before April 1 of the following year.

(f) *Renewal claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter. If the renewal claim is submitted during the last year of the original term of copyright, the renewal must be made in the name(s) of the statutory claimant(s) entitled to claim the renewal on the date the renewal claim is submitted to the Copyright Office for registration. If the renewal claim is submitted during the sixty-seven year renewal term, the renewal claim can only be registered in the name(s) of the statutory claimant(s) entitled to claim the renewal on the last day (December 31st) of the original term of copyright.

(i) In the case of any posthumous work or of any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim may be registered in the name of the proprietor;

(ii) In the case of 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 is made for hire, the renewal claim may be registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in descending order of eligibility:

(A) The author of the work, if still living;

(B) The widow, widower, or children of the author, if the author is not living;

(C) The author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(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.

(2) The provisions of paragraph (f)(1) of this section are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii) of this section, in any case where 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 the claim.

(3) The provisions of paragraphs (f)(1)(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 or removed before the estate has been completely administered, 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 (f)(3)(i) 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 the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(g) *Application for renewal registration.* (1) Each application for renewal registration shall be submitted on Form RE. Copies of Form RE, and if applicable, the Addendum to Form RE, are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, DC 20559.

(2)(i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (f) of this section or by the duly authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by the appropriate fee, as required in § 201.3(c). 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 the duly authorized agent of such claimant (whose identity shall also be given);

(B) The handwritten signature of such claimant 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.

(iii) In the case of an application for renewal registration of a work for which no original registration was made, the application shall be accompanied by an Addendum and deposit material in accordance with paragraph (h) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(h) *Addendum for an unregistered work*--(1) *Content.* If original term registration is not timely made for a work, the renewal application Form RE must be accompanied by an Addendum to Form RE which 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 place 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, all the copies of the work published under the authority of the author or other copyright proprietor bore the copyright notice required by the Copyright Act of 1909, title 17 of the United States Code in effect on December 31, 1977, and that United States copyright subsists in the work; and

(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 Addendum must also contain information about the country of manufacture and the manufacturing processes.

(2) *Signature.* The Addendum must contain the handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (i) be accompanied by the printed typewritten name of the person signing the Addendum and by the date of the signature; and (ii) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code:

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(3) *Deposit requirement for an unregistered work.* In addition to the Addendum to Form RE, an application for renewal registration of a work for which no original term registration is made must be accompanied by one copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in sections 202.20 and 202.21 of the Copyright Office regulations for basic registration.

(4) *Waiver of the deposit requirement.* In a case where the renewal applicant asserts that it is either physically impossible or otherwise an undue hardship to satisfy the deposit requirements of § § 1A202.20 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 the descending order of preference:

(i) A reprint, photocopy, or identifying reproduction of the work as first published; or

(ii)(A) A photocopy of the title page of the work as first published;

(B) A photocopy of the page of the work as first published bearing the copyright notice;

(C) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different; and

(D) A brief description of the copyrightable content of the work, which is sufficient to enable the Copyright Office to examine the work. The Examining Division of the Copyright Office may request deposit of additional descriptive material if the original submission is inadequate.

Legislative History

[*57 FR 60483,* Dec. 21, 1992; *64 FR 29518, 29522,* June 1, 1999; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39818, 39819,* June 28, 2000; *66 FR 24267, 24268,* May 14, 2001; *66 FR 34372, 34373,* June 28, 2001, as corrected at *66 FR 40322,* Aug. 2, 2001]

§ 202.18 [Reserved]

[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.

(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.*

(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) Automated databases available only on-line in the United States. The exemption does not include the following: automated databases distributed in the form of machine-readable copies (such as magnetic tape or disks, CD-ROM formats, punch cards, or the like); computerized information works in the nature of statistical compendia, serials, and reference works; 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); works published in visually perceptible form but used in connection with optical scanning devices; and works reproduced in CD-ROM formats.

(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 (diazo or ozalid process). If photographs are submitted, they should be 8 x 10 inches and should clearly show several exterior and interior views. The deposit should disclose the name(s) of the architect(s) and draftsperson(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 Chief, Examining 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.

(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.

Legislative History

[*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 29518, 29522,* June 1, 1999; *64 FR 62977, 62978,* Nov. 18, 1999; *66 FR 34372, 34373,* June 28, 2001]

§ 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) of these regulations.

(2) A *complete* copy or phonorecord means the following:

(i) *Unpublished works.* Subject to the requirements of paragraph (b)(2)(vi) 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) (iii) through (vi) 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) *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.

(iv) *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;

(v) *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;

(vi) *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 Examining Division 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 consiting 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 proportinately 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 3x3 inches and no larger than 9x12 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 3x3 inches and no larger than 9x12 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, and 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.

(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 12x24x6 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 Examining Division 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), the deposit must consist of one complete copy of the best edition of each issue included in the group registration. In addition, 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 (diazo or ozalid process).

The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsperson(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 (diazo or ozalid process).

With respect to the accompanying photographs, the Copyright Office prefers 8 x 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 draftsperson(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 Examining Division 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)(3)(i)(B) (unpublished collections) or 202.3(b)(9) (group registration of published photographs), 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, clearly depicting the photograph, provided that if registration is made pursuant to § 202.3(b)(9) 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 Chief, Examining Division 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.

Legislative History

[*51 FR 6405,* Feb. 24, 1986, as amended at *53 FR 29890,* Aug. 9, 1988; *54 FR 13176, 13181,* Mar. 31, 1989; *54 FR 21059,* May 16, 1989; *55 FR 50557,* Dec. 7, 1990; *56 FR 47403,* Sept. 19, 1991; *56 FR 55632,* Oct. 29, 1991; *56 FR 60065,* Nov. 27, 1991; *56 FR 65191,* Dec. 16, 1991; *57 FR 45310,* Oct. 1, 1992; *60 FR 34168,* June 30, 1995; *62 FR 35420, 35421,* July 1, 1997; *64 FR 36574, 36575,* July 7, 1999; *66 FR 37142, 37150,* July 17, 2001]

§ 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 3x3 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 3x3 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 3x3 inches and not more than 9x12 inches, but preferably 8x10 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 33 inches and no larger than 912 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 Examining Division of the Copyright Office, the "description" required by § 202.20(c)(2)(ii) of these regulations may be a continuity, a press-book, 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).

Legislative History

[*51 FR 6409,* Feb. 24, 1986]

§ 202.22 Acquisition and deposit of unpublished television transmission programs.

(a) *General.* This section prescribes rules pertaining to the acquisition of copies of unpublished television transmission programs by the Library of Congress under section 407(e) of title 17 of the United States Code, as amended by Pub. L. 94-553. It also prescribes rules pertaining to the use of such copies in the registration of claims to copyright, under section 408(b)(2).

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

(1) The terms *copies, fixed, 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.

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

(c) *Off-the-air copying.* (1) Library of Congress employees acting under the general authority of the Librarian of Congress may make a fixation of an unpublished television transmission program directly from a transmission to the public in the United States, in accordance with section 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 acquisition policies in effect at the

time of fixation. Specific notice of an intent to copy a transmission program off-the-air will ordinarily not be given. In general, the Library of Congress will seek to copy off-the-air a substantial portion of the programming transmitted by noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will copy off-the-air selected programming transmitted by commercial broadcast stations, both network and independent.

(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 copied off-the-air by the Library.

(3) The Library of Congress will not knowingly copy off-the-air any unfixed or published television transmission program under the copying 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 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 off-the-air copying 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 with notice of copyright; 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 off-the-air copy 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 to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code.

(8) The Library of Congress in making fixations of unpublished 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 network stations, the notification will be sent to the particular network. In the case of any other commercial 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 television 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 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 to the Library, lending a copy to the Library for reproduction, or selling a copy to the Library at a price not to exceed the cost of reproducing and supplying the copy;

(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 copies' use;

(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* (a) and (c), if the recipient takes the position that the work is published; and

(vi) A statement that a compliance copy 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 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. 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 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 shall be granted.

(e) *Disposition and use of copies.* (1) All copies 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 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 acquired or made under this section, except copies of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the restrictions concerning copying and access found in 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. Copies of 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" (section 170 of Title 2 of the United States Code) and such regulations as the Librarian of Congress shall prescribe.

(f) *Registration of claims to copyright.* (1) Copies 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 so fixed be used to satisfy the registration deposit provisions.

(2) Copies 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 lent, transferred, or sold, and there is an explanation that the copy 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 of unpublished television 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.

Legislative History

[*48 FR 37208,* Aug. 17, 1983, as amended at *56 FR 7815,* Feb. 26, 1991; *60 FR 34168,* June 30, 1995; *64 FR 36574, 36575,* July 7, 1999; *65 FR 48913, 48914,* Aug. 10, 2000; *66 FR 34372, 34373,* June 28, 2001]

§ 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 Reference 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.

Legislative History

[*52 FR 28822,* Aug. 4, 1987; *60 FR 34168,* June 30, 1995; *63 FR 29137, 29139,* May 28, 1998; *64 FR 29518, 29522,* June 1, 1999; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39818, 39819,* June 28, 2000]

APPENDIX A TO PART 202 -- TECHNICAL GUIDELINES REGARDING SOUND PHYSICAL CONDITION

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Legislative History

[*48 FR 37209,* Aug. 17, 1983; *60 FR 34168,* June 30, 1995]

AUTHORITY: *(17 U.S.C. 407,* 408, 702)

APPENDIX B TO PART 202 -- "BEST EDITION" OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

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Legislative History

[*54 FR 42299,* Oct. 16, 1989; *62 FR 51603,* Oct. 2, 1997]

PART 203 --FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

AUTHORITY: *17 U.S.C 702; 5 U.S.C 552,* as amended .

FOOTNOTES:

[n1] Footnote 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.

[n2] Footnote 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.

[n3] Footnote 1. 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.

[n4] Footnote 2. A *sound recording* does not include the sounds accompanying a motion picture or other audiovisual work *(17 U.S.C. 101).* For this purpose, "accompanying" does not require physical integration in the same copy. Accordingly, registration may be made for a motion picture or audiovisual kit in Class PA and that registration will cover the sounds embodied in the "sound track" of the motion picture or on disks, tapes, or the like included in the kit. Separate application in Class SR is not appropriate for these elements.

[n5] Footnote 3. 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.

[n6] Footnote 4. 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.

[n7] Footnote 5. 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.

[n8] Footnote 6. In the case of applications for group registration of newspapers, contributions to periodicals, and newsletters, under paragraphs (b)(6), (b)(7), and (b)(8) of this section, the deposits shall comply with the deposits specified in the respective paragraphs, and the fees with those specified in § 201.3.

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.

Legislative History

[*43 FR 774,* Jan. 4, 1978; *66 FR 34372, 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.

Legislative History

[*43 FR 774,* Jan. 4, 1978; *62 FR 35420, 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 Associate Register of Copyright for Operations has oversight of the operating divisions of the Copyright Office. The operating divisions are:

(1) The Receiving and Processing Division, which receives incoming materials, dispatches outgoing materials and establishes control over fiscal accounts.

(2) The Examining Division, 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 coyrightable subject matter and whether the other legal and formal requirements of Title 17 have been met.

(3) The Cataloging Division, 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 Reference Division, which provides a national copyright information service through the Public Information Office, 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 Reference 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 Arbitration Royalty Panels.

(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 Arbitration Royalty Panels.

(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 Associate Register of Copyrights for National Programs is primarily responsible for initiating, planning, developing, and implementing projects and activities related to the Copyright Office electronic registration, recordations, and deposit system (CORDS).

(f) The Office has no field organization.

(g) 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.

(h) 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.

(i) 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.

Legislative History

[*47 FR 36820,* Aug. 24, 1982; *60 FR 34168,* June 30, 1995; *62 FR 55740, 55742,* Oct. 28, 1997, as confirmed at *63 FR 1926, 1927,* Jan. 13, 1998; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39819,* June 28, 2000; *66 FR 34372, 34373,* June 28, 2001]

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 Southwest Station, Washington, D.C. 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.

(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, Southwest Station, 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"v 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.

Legislative History

[*43 FR 774,* Jan. 4, 1978, as amended at *47 FR 36820,* Aug. 24, 1982; *62 FR 55740, 55742,* Oct. 28, 1997, as confirmed and amended at *63 FR 1926, 1927,* Jan. 13, 1998; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39819,* June 28, 2000; *66 FR 34372, 34373,* June 28, 2001]

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.

Legislative History

[*43 FR 774,* Jan. 4, 1978]

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 themseleves 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 programing, 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 ho urs 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 amoun t to more than $ 25.00, the Office shall notify the requester as soon as praticable 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.

Legislative History

[*53 FR 8456,* March 15, 1988, as amended at *56 FR 59885,* Nov. 26, 1991; *62 FR 55740, 55742,* Oct. 28, 1997, as confirmed at *63 FR 1926, 1927,* Jan. 13, 1998; *63 FR 29137, 29139,* May 28, 1998; *64 FR 29518, 29522,* June 1, 1999; *66 FR 34372, 34373,* June 28, 2001]

PART 204 --PRIVACY ACT: POLICIES AND PROCEDURES

AUTHORITY: *17 U.S.C. 702; 5 U.S.C. 552*(a) .

§ 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.

Legislative History

[*43 FR 776,* Jan. 4, 1978.]

§ 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.

Legislative History

[*43 FR 776,* Jan. 4, 1978.]

§ 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, recordations, 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.

Legislative History

[*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, Information Section, Copyright GC/I&R, P.O. Box 70400, Southwest Station, 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.

Legislative History

[*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 36574, 36575,* July 7, 1999; *65 FR 39819, 39820,* June 28, 2000]

§ 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, Information Section, Copyright GC/I&R, P.O. Box 70400, Southwest Station, 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.

Legislative History

[*43 FR 776,* Jan. 4, 1978, as amended at *47 FR 36821,* Aug. 24, 1982; *60 FR 34169,* June 30, 1995; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39819, 39820,* June 28, 2000]

§ 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.

Legislative History

[*43 FR 776,* Jan. 4, 1978, as amended at *47 FR 36821,* Aug. 24, 1982; *56 FR 59886,* Nov. 26, 1991; *63 FR 29137, 29139,* May 28, 1998; *64 FR 29518, 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, Information Section, Copyright GC/I&R, P.O. Box 70400, Southwest Station, 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.

Legislative History

[*43 FR 776,* Jan. 4, 1978, as amended at *47 FR 36821,* Aug. 24, 1982; *60 FR 34169,* June 30, 1995; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39819, 39820,* June 28, 2000]

§ 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, Southwest Station, 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.

Legislative History

[*43 FR 776,* Jan. 4, 1978; *64 FR 36574, 36575,* July 7, 1999; *65 FR 39819, 39820,* June 28, 2000; *65 FR 48913, 48914,* Aug. 10, 2000; *66 FR 34372, 34373,* June 28, 2001]

§ 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).

Legislative History

[*43 FR 776,* Jan. 4, 1978]

PART 205 --PRODUCTION OF LEGAL DOCUMENTS AND OFFICIAL TESTIMONY

AUTHORITY: *17 U.S.C. 411* and 702 .

§ 205.1 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 delivering such documents by first class mail to the General Counsel of the Copyright Office, GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, or delivery by hand to the General Counsel of the Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue,

SE, Washington, D.C. A second copy should be delivered by first class mail to the United States Department of Justice, directed to the Director of Intellectual Property Staff, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530.

Legislative History

[*66 FR 19094,* Apr. 13, 2001; *66 FR 34372, 34373,* June 28, 2001]

PARTS 206--210 [RESERVED]

PART 211 --MASK WORK PROTECTION

AUTHORITY: *17 U.S.C. 702* and 908 .

§ 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 ths 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.

Legislative History

[*50 FR 26719,* June 28, 1985.]

§ 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.

Legislative History

[*50 FR 26719,* June 28, 1985; *66 FR 34372, 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.

Legislative History

[*50 FR 26719,* June 28, 1985, as amended at *56 FR 59886,* Nov. 26, 1991; *59 FR 38372,* July 28, 1994; *63 FR 29137, 29139,* May 28, 1998; *64 FR 29518, 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 Public Information Office, U.S. Copyright Office, Library of Congress, Washington, D.C. 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.

(g) [Redesignated.]

Legislative History

[*50 FR 26719,* June 28, 1985, as amended at *56 FR 7818,* Feb. 26, 1991; *64 FR 36574, 36575,* July 7, 1999; *66 FR 34372, 34373,* June 28, 2001]

§ 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 x 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 x 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 Chief, Examining Division of the Copyright Office, Washington, DC 20559-6000, 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.

Legislative History

[*50 FR 26719,* June 28, 1985; *60 FR 34169,* June 30, 1995; *64 FR 36574, 36575,* July 7, 1999]

§ 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 "" (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.

Legislative History

[*50 FR 26719,* June 28, 1985; *60 FR 34169,* June 30, 1995]

PART 212 --PROTECTION OF VESSEL HULL DESIGNS

AUTHORITY: *17 U.S.C. chapter 13* .

§ 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.

Legislative History

[*64 FR 36576, 36578,* July 7, 1999]

§ 212.2 Fees.

The following fees or charges are established by the Register of Copyrights for services related to designs:

(a) For filing an application for registration of one design: $ 140;

(b) For filing an application for registration of more than one design: $ 140, plus $ 140 for each design beyond the first;

(c) For each page of deposit material identifying the design beyond the third page: $ 20;

(d)(1) For special handling of an application for registration of a design: $ 580;

(2) For special handling of each additional design in an application for registration of multiple designs: $ 50;

(e) For corrections or omissions in the certificate of registration: $ 100;

(f) For recordation of a distinctive identification of an owner: $ 80;

(g) For providing an additional certificate of registration: $ 30;

(h) For providing any other certification of Copyright Office records: $ 75 per hour;

(i) For preparing a search report: $ 65 per hour;

(j) For expediting a request for certification or search of Office records, the appropriate fees set out in § 201.3(d).

Legislative History

[*64 FR 36576, 36578,* July 7, 1999; *67 FR 38003, 38005,* May 31, 2002]

§ 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" x 11" sheets containing drawings or photographs as part of the basic $ 75 application fee. The fee for each additional sheet beyond three is $ 20 per sheet. 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" x 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" x 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 $ 75 basic application fee 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).

Legislative History

[*64 FR 36576, 36578,* July 7, 1999]

§ 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.

Legislative History

[*64 FR 36576, 36579,* July 7, 1999]

§ 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) A recordation fee of $ 80.

(d) The document should be mailed to: Dept. D-VH, Vessel Hull Registration, P.O. Box 71380, Washington, DC 20024-1380.

Legislative History

[*64 FR 36576, 36580,* July 7, 1999; *67 FR 38003, 38005,* May 31, 2002]

§ 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.*

Legislative History

[*64 FR 36576, 36580,* July 7, 1999]

Vol 7: SUBCHAPTER B --COPYRIGHT ARBITRATION ROYALTY PANEL RULES AND PROCEDURES

PART 251 --COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

AUTHORITY: *17 U.S.C. 801*-803.

Subpart A --Organization

§ 251.1 Official addresses.

Claims, pleadings, and general correspondence should be addressed to:

Click here to view image.

or, hand-delivered to:

Click here to view image.

Legislative History

[*59 FR 23981,* May 9, 1994; *61 FR 63715, 63717,* Dec. 2, 1996]

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning royalty rates for the cable compulsory license, *17 U.S.C. 111;*

(b) To make determinations concerning royalty rates and terms for making ephemeral recordings, *17 U.S.C. 112*(e);

(c) To make determinations concerning royalty rates and terms for the public performance of sound recordings by certain digital audio transmissions, *17 U.S.C. 114;*

(d) To make determinations concerning royalty rates for making and distributing phonorecords, and royalty rates and terms for digital transmissions that constitute digital phonorecord deliveries, *17 U.S.C. 115;*

(e) To make determinations concerning royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license expires or is terminated and is not replaced by another such license agreement, *17 U.S.C. 116;*

(f) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations for certain copyrighted works, *17 U.S.C. 118;*

(g) To make determinations concerning royalty rates for the satellite carrier compulsory license, *17 U.S.C. 119;* and

(h) To make determinations concerning the distribution of cable and satellite carrier royalty fees and digital audio recording devices and media payments deposited with the Register of Copyrights, *17 U.S.C. 111,* 119, and chapter 10, respectively.

Legislative History

[*59 FR 23981,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994; *61 FR 37213, 37215,* July 17, 1996; *63 FR 65555, 65556,* Nov. 27, 1998]

§ 251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit, before January 1, 1998, and every two years thereafter, a list of persons qualified to serve as arbitrators on a Copyright Arbitration Royalty Panel. The list shall contain the following for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

(b) After January 1, 1998, and every two years thereafter, the Librarian of Congress shall publish in the Federal Register a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter. With respect to persons on the arbitrator list, the Librarian will make available for copying and inspection the information provided under paragraph (a) of this section.

Legislative History

[*59 FR 23981,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994; *61 FR 63715, 63717,* Dec. 2, 1996; *63 FR 30634, 30635,* June 5, 1998]

§ 251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to a proceeding may, during the 45-day period specified in § 251.45(b)(2)(i), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 45-day period specified in § 251.45(b)(2)(i), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

Legislative History

[*59 FR 23982,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994]

§ 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a Copyright Arbitration Royalty Panel, a person must, at a minimum, have the following qualifications:

(a) Admitted to the practice of law in any state, territory, trust territory, or possession of the United States.

(b) Ten or more years of legal practice.

(c) Experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes.

Legislative History

[*59 FR 23982,* May 9, 1994; *61 FR 63715, 63717,* Dec. 2, 1996]

§ 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the Federal Register initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two arbitrators from the arbitrator list for that calendar year.

(b) The two arbitrators so selected shall, within ten days of their selection, choose a third arbitrator from the same arbitrator list. The third arbitrator shall serve as the chairperson of the panel during the course of the proceedings.

(c) If the two arbitrators fail to agree upon the selection of the third, the Librarian will promptly select the third arbitrator from the same arbitrator list.

(d) The third arbitrator so chosen shall serve as the chairperson of the panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the panel.

(e) Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

(f) If, before the commencement of hearings in a proceeding, one or more of the arbitrators is unable to continue service on the CARP, the Librarian will suspend the proceeding as provided by § 251.8, and will inaugurate a procedure to bring the CARP up to the full complement of three arbitrators. Where one or two vacancies exist, and either or both of the vacant seats were previously occupied by arbitrators selected by the Librarian, the Librarian will select the necessary replacements from the current arbitrator list. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators shall select the replacement from the arbitrator list, and the person chosen shall serve as chairperson. If there are two vacant seats, and one of them was previously occupied by the chairperson, the Librarian will select one replacement from the arbitrator list, and that person shall join with the remaining arbitrator to choose the replacement, who shall serve as chairperson.

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum. If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under § 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

Legislative History

[*59 FR 23982,* May 9, 1994; *63 FR 30634, 30635,* June 5, 1998]

§ 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the Federal Register according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend,

supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the Federal Register.

Legislative History

[*59 FR 23982,* May 9, 1994]

§ 251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under § 251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Legislative History

[*59 FR 23982,* May 9, 1994]

Subpart B --Public Access to Copyright Arbitration Royalty Panel Meetings

§ 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in § 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the Federal Register at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding.

In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a recorded vote of the panel and included in the announcement.

Legislative History

[*59 FR 23983,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994]

§ 251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video

recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to be present does not include the right to participate or make comments.

Legislative History

[*59 FR 23983,* May 9, 1994]

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close meetings, or any portion of a meeting, or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than *5 U.S.C. 552)* and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be a clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to *5 U.S.C. 554,* or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

Legislative History

[*59 FR 23983,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994, as corrected at *60 FR 8197,* Feb. 13, 1995]

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under § 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

(c) Following such a vote, the following information shall be published in the Federal Register as soon as possible:

(1) The vote of each arbitrator; and

(2) The appropriate exemption under § 251.13; and

(3) A list of all persons expected to attend the meeting and their affiliation.

(d) The procedure for closed meetings in this section and in § 251.15 shall not apply to the internal deliberations of arbitrators carried out in furtherance of their duties and obligations under this chapter.

Legislative History

[*59 FR 23983,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994]

§ 251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of § 251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least two years, or for at least one year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under § 251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the panel and, if at that time the chairperson determines that they should be disclosed, he or she will resubmit the question to the CARP to gain authorization for their disclosure.

Legislative History

[*59 FR 23983,* May 9, 1994]

§ 251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned "Request to Open" or "Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Legislative History

[*59 FR 23984,* May 9, 1994]

Subpart C --Public Access to and Inspection of Records

§ 251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the Federal Register in accordance with § 251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under *17 U.S.C. 801* and 802, are available for inspection and copying at the address provided in § 251.1 with the exception of:

(1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, the Copyright Office, or the Library of Congress;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a CARP concerning the drafting of decisions, opinions, reports, and findings on any CARP matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators, or findings on any matter or proceeding conducted under *17 U.S.C. chapter 8;*

(7) Offers of settlement that have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as "exempted" if a CARP or the Librarian of Congress finds compelling reasons for such action.

Legislative History

[*59 FR 23984,* May 9, 1994]

§ 251.22 Public access.

(a) *Location of records.* All of the following records relating to rate adjustment and distribution proceedings under this subchapter shall be maintained at the Copyright Office:

(1) Records required to be filed with the Copyright Office; or

(2) Records submitted to or produced by the Copyright Office or Library of Congress under *17 U.S.C. 801* and 802, or

(3) Records submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding. In the case of records submitted to or produced by a CARP that is currently conducting a proceeding, such records shall be maintained by the chairperson of that panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

(c) *Fees.* Fees for photocopies of CARP or Copyright Office records are the applicable Office charge. Fees for searching for records, certification of documents, and other costs incurred are as provided in *17 U.S.C. 705,* 708.

Legislative History

[*59 FR 23984,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994]

§ 251.23 FOIA and Privacy Act.

Freedom of Information Act and Privacy Act provisions applicable to CARP proceedings can be found in parts 203 and 204 of *subchapter A* of this chapter.

Legislative History

[*59 FR 23984,* May 9, 1994]

Subpart D --Standards of Conduct

§ 251.30 Basic obligations of arbitrators.

(a) *Definitions.* For purposes of these regulations, the following terms shall have the meanings given in this subsection:

(1) A "selected arbitrator" is a person named by the Librarian of Congress, or by other selected arbitrators, for service on a particular CARP, in accordance with § 251.6 of these regulations;

(2) A "listed arbitrator" is a person named in the "arbitration list" published in accordance with § 251.3 of these regulations.

(b) *General principles applicable to arbitrators.* Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall apply these principles where applicable.

(1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.

(2) Arbitrators shall not hold financial interests that conflict with the conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

Legislative History

[*59 FR 23984,* May 9, 1994; *63 FR 30634, 30635,* June 5, 1998]

§ 251.31 Financial interests.

(a) No selected arbitrator shall have a direct or indirect financial interest --

(1) in the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) in the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) "Direct or indirect financial interest" shall not include-

(1) owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or

(2) receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interests of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

(1) The arbitrator's spouse;

(2) The arbitrator's minor child;

(3) The arbitrator's general partner, except that the personal financial holdings, including stock and bond investments, of such partner will not serve to disqualify the selected arbitrator; or

(4) An organization or entity for which the arbitrator serves as officer, director, trustee, general partner or employee.

Legislative History

[*59 FR 23985,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994]

§ 251.32 Financial disclosure statement.

(a) Within 45 days of their nomination, each nominated arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.31.

(b) If any conflicts do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except --

(1) The listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve; or

(2) The listed arbitrator may offer to disclose on the record the conflict of interest causing disqualification. In such instances:

(i) The Librarian shall publish a list detailing the conflicts of interest the listed arbitrators have offered to disclose, and any other matters which, although outside of the scope of the restrictions of § 251.31, nevertheless, in the view of the Librarian, raise sufficient concerns to warrant disclosure to the affected parties;

(ii) Such list shall be included in an order issued no later than the commencement of the 45-day precontroversy discovery period;

(iii) Such list shall contain the matters of concern, but shall not contain the names of the listed arbitrators.

(iv) Any party to the proceeding for which the listed arbitrator is being considered may interpose within the 45-day period described in § 251.45(b) an objection to that arbitrator being selected. If the objection is raised to a matter found to be within the scope of § 251.31, the objection will serve automatically to disqualify the arbitrator. If the objection is raised to a matter found to be outside the scope of § 251.31, the objection will be taken into account when the Librarian makes his or her selection, but will not serve automatically to disqualify the arbitrator.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are no changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of § 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest --

(1) during the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) if the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

Legislative History

[*59 FR 23985,* May 9, 1994; *59 FR 63040,* Dec. 7, 1994, as corrected at *60 FR 8197,* Feb. 13, 1995; *61 FR 63715, 63717,* Dec. 2, 1996; *63 FR 30634, 30635,* June 5, 1998]

§ 251.33. Ex parte communications.

(a) *Communications with Librarian or Register.* No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) *Selected arbitrators.* No interested person shall engage in, or cause someone else to engage in, *ex parte* communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange of pleasantries, shall not be deemed to constitute an *ex parte* communication.

(c) *Listed arbitrators.* No interested person shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as an arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) *Library and Copyright Office personnel.* No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) *Outside contacts.* The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) *Responsibilities of recipients of communication.* (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding:

(i) all such written or recorded communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

Legislative History

[*59 FR 23985,* May 9, 1994; *59 FR 63040, 63041,* Dec. 7, 1994, as corrected at *60 FR 8197,* Feb. 13, 1995]

§ 251.34 Gifts and other things of monetary value.

(a) *Selected arbitrators.* From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) *Listed arbitrators.* No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except --

(1) a listed arbitrator may accept unsolicited gifts having an aggregate market value of $ 20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed $ 50 in a calendar year, or

(2) a listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift --

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

Legislative History

[*59 FR 23986,* May 9, 1994]

§ 251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall --

(1) engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments --

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

Legislative History

[*59 FR 23986,* May 9, 1994]

§ 251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

Legislative History

[*59 FR 23986,* May 9, 1994]

§ 251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner --

(1) intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) draft interlocutory rulings or draft decisions; or

(3) the CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

Legislative History

[*59 FR 23986,* May 9, 1994]

§ 251.38 Billing and commitment to standards.

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under § 251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, for travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under § 251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress, arbitrators shall perform their own work, including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

Legislative History

[*59 FR 23986,* May 9, 1994, as corrected at *60 FR 8197,* Feb. 13, 1995]

§ 251.39 Remedies.

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following --

(a) in the case of a selected arbitrator,

(1) removal of the arbitrator from the proceeding;

(2) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(3) referral of the matter to the bar of which the arbitrator is a member.

(b) in the case of a listed but not selected arbitrator --

(1) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(2) referral of the matter to the bar of which the listed arbitrator is a member.

(c) in the case of an interested party or individual who engaged in the ethical violation --

(1) referral of the matter to the bar or professional association of which the interested individual is a member;

(2) barring the offending individual from current and/or future appearances before the CARP;

(3) designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.

(d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

Legislative History

[*59 FR 23987,* May 9, 1994]

Subpart E --Procedures of Copyright Arbitration Royalty Panels

§ 251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under *17 U.S.C. 803* for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

Legislative History

[*59 FR 23987,* May 9, 1994]

§ 251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of § 251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the 45-day period specified in § 251.45(b)(1)(i) for distribution proceedings, or during the 45-day period specified in § 251.45(b)(2)(i) for rate adjustment proceedings, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP decide the controversy or rate adjustment on the basis of written pleadings. The petition may be granted if --

(1) The controversy or rate adjustment, as appropriate, does not involve any genuine issue of material fact; or

(2) All parties to the proceeding agree, in writing, that a grant of the petition is appropriate.

Legislative History

[*59 FR 23987,* May 9, 1994; *59 FR 63041,* Dec. 7, 1994]

§ 251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the panel shall follow procedures consistent with *5 U.S.C. chapter 5,* subchapter II.

Legislative History

[*59 FR 23987,* May 9, 1994]

§ 251.43 Written cases.

(a) All parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Office, and with other parties in the manner in which the Librarian of Congress shall direct in accordance with § 251.45(b).

(b) The written direct case shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

Legislative History

[*59 FR 23987,* May 9, 1994; *59 FR 63041,* Dec. 7, 1994; *61 FR 63715, 63717,* Dec. 2, 1996; *63 FR 30634, 30635,* June 5, 1998]

§ 251.44 Filing and service of written cases and pleadings.

(a) *Filing of pleadings.* In a royalty fee distribution proceeding or in a rate adjustment proceeding, the submitting party shall deliver an original and five copies of all filings to the Copyright Office at the address listed in § 251.1, unless otherwise instructed by the Librarian of Congress or the CARP. The Copyright Office will make further distribution to the CARP, as necessary. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) *Exhibits.* All exhibits must be included with a party's case; however, in the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Librarian of Congress or the CARP may reduce the number of required copies. Nevertheless, a complete copy must still be submitted to the Copyright Office.

(c) *English language translations.* In all filings with a CARP or the Librarian of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to *28 U.S.C. 1746* supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be signed by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) *Service.* The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP.

(g) *Oppositions and replies.* Except as otherwise provided in this part or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within seven business days of the filing of the motion, and replies to oppositions shall be filed within five business days of the filing of the opposition. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

Legislative History

[*59 FR 23987,* May 9, 1994, as corrected at *60 FR 8197,* Feb. 13, 1995; *61 FR 63715, 63717,* Dec. 2, 1996; *65 FR 39819, 39820,* June 28, 2000]

§ 251.45 Discovery and prehearing motions.

(a) *Request for comment, notice of intention to participate.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the Federal Register a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. In the case of a rate adjustment proceeding, the Librarian of Congress shall, after receiving a petition for rate adjustment filed under § 251.62, or, in the case of noncommercial educational broadcasting and satellite carrier, prior to the commencement of proceedings, publish in the Federal Register a notice requesting interested parties to comment on the petition for rate adjustment. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

(b) *Precontroversy discovery, filing of written cases, scheduling.* (1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b) and objections to arbitrators appearing on the arbitrator list under § 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to § 251.72, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b) and objections to arbitrators appearing on the arbitrator list under § 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to § 251.64, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of written direct and rebuttal cases with it in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of written cases with a CARP, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

Legislative History

[*59 FR 23988,* May 9, 1994, as amended at *59 FR 63041,* Dec. 7, 1994; *61 FR 63715, 63718,* Dec. 2, 1996]

§ 251.46 Conduct of hearings: Role of arbitrators.

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

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

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

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

(2) Administering oaths and affirmations to all witnesses;

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

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

(5) Announcing the schedule of subsequent hearings.

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

Legislative History

[*59 FR 23988,* May 9, 1994; *63 FR 30634, 30635,* June 5, 1998]

§ 251.47 Conduct of hearings: Witnesses and counsel.

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

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

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

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

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

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

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

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

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

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the CARP and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(l) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination of any given witness. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination of any given witness, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

Legislative History

[*59 FR 23988,* May 9, 1994; *59 FR 63041,* Dec. 7, 1994; *63 FR 30634, 30635,* June 5, 1998]

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of

action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of the characteristics which were measured and counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

Legislative History

[*59 FR 23989,* May 9, 1994; *60 FR 8197,* Feb. 13, 1995; *63 FR 30634, 30635,* June 5, 1998]

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by *17 U.S.C. 802*(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

Legislative History

[*59 FR 23990,* May 9, 1994]

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, that no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

Legislative History

[*59 FR 23990,* May 9, 1994, as corrected at *60 FR 8197,* Feb. 13, 1995]

§ 251.51 Closing the record.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the panel may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume, except upon ten days' notice to all parties.

Legislative History

[*59 FR 23990,* May 9, 1994; *59 FR 63041,* Dec. 7, 1994]

§ 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed findings submitted by someone other than a party in a proceeding shall be restricted to those issues specifically affecting that person.

(d) Proposed conclusions shall be stated separately.

Legislative History

[*59 FR 23990,* May 9, 1994; *59 FR 63041,* Dec. 7, 1994; as corrected and revised at *60 FR 8198,* Feb. 13, 1995]

§ 251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law and any replies thereto specified in § 251.52, and not later than 180 days from publication in the Federal Register of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the panel found relevant to its determination.

(b) The determination of the panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinion shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

Legislative History

[*59 FR 23990,* May 9, 1994; *59 FR 63041,* Dec. 7, 1994]

§ 251.54 Assessment of costs of arbitration panels.

(a) The ordinary and necessary costs of an arbitrator shall be assessed, in accordance with § 251.38, as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution. These costs shall be considered reasonable costs incurred by the Librarian of Congress and the Copyright Office. Such costs shall be deducted from the royalty fees which have been deposited and collected under title 17 of the United States Code and which are the subject of the distribution proceeding.

(b) Each arbitrator shall itemize his or her expenses on the statement of cost in a format approved by the General Counsel and shall specify the name and address to whom payment should be made. In the case of a rate adjustment proceeding, each statement of cost shall specify each party's share of the total cost and the amount owed by that party to each arbitrator, or alternatively, reflect the method of payment agreed upon by the parties and the arbitrators.

(c) The statements of cost shall be sent to the Library of Congress no more frequently than once a month.

(1) In the case of a distribution proceeding, the statements of cost shall be sent to the Accounting Operations Section, Financial Services Directorate, Library of Congress, 101 Independence Avenue, SE, Washington, DC 20540-9112, and a copy of the statements of cost shall be submitted to the Copyright Office as directed in paragraph (c)(2) of this section.

(2) In the case of a rate adjustment proceeding, the statements of cost shall be sent to the CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024, or hand delivered to the Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20540.

(d) In the case of a rate adjustment proceeding, all parties to the proceeding shall have 30 days from receipt of a proper statement of cost in which to tender payment to the arbitrators, unless otherwise directed by the panel. Payment should be in the form of a money order, check, bank draft, or electronic fund transfer.

(e) In the case of a distribution proceeding, the Library of Congress shall reimburse the arbitrators from the royalty fees collected under title 17 of the United States Code which are the subject of the CARP proceeding. Payment of approved costs shall be made within 30 days of the receipt of a proper statement of cost in the form of an electronic fund transfer in accordance with the regulations of the Library of Congress.

Legislative History

[*59 FR 23990,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *64 FR 25201,* May 11, 1999; *64 FR 36574, 36575,* July 7, 1999]

§ 251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

Legislative History

[*59 FR 23990,* May 9, 1994]

§ 251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see § 251.55, but within 90 days from receipt of the report of the determination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the Librarian shall have an additional 30 days to issue the order which shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the Federal Register.

Legislative History

[*59 FR 23991,* May 9, 1994; *64 FR 36574, 36576,* July 7, 1999]

§ 251.57 Effective date of order.

An order of determination issued by the Librarian under § 251.56 shall become effective 30 days following its publication in the Federal Register, unless an appeal has been filed pursuant to § 251.58 and notice of the appeal has been served on all parties to the proceeding.

Legislative History

[*59 FR 23991,* May 9, 1994]

§ 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under § 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the Federal Register.

(b) If no appeal is brought within the 30-day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under *17 U.S.C. 111,* 112, 114, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees by those sections.

Legislative History

[*59 FR 23991,* May 9, 1994; *61 FR 37213, 37215,* July 17, 1996; *63 FR 65555, 65556,* Nov. 27, 1998; *64 FR 36574, 36576,* July 7, 1999]

Subpart F --Rate Adjustment Proceedings

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable *(17 U.S.C. 111),* the making of ephemeral recordings *(17 U.S.C. 112),* certain digital audio transmissions *(17 U.S.C. 114),* the manufacture and distribution of phonorecords, including digital phonorecord deliveries *(17 U.S.C. 115),* performances on coin-operated phonorecord players (jukeboxes) *(17 U.S.C. 116),* noncommercial educational broadcasting *(17 U.S.C. 118)* and satellite carriers *(17 U.S.C. 119).* Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

Legislative History

[*59 FR 23991,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *61 FR 37213, 37215,* July 17, 1996; *63 FR 30634, 30635,* June 5, 1998; *63 FR 65555, 65556,* Nov. 27, 1998]

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) *Cable:* During 1995, and each subsequent fifth calendar year.

(2) *Ephemeral recordings:* During a 60-day period prescribed by the Librarian in 1999, 2000, and at 2-year intervals thereafter, or as otherwise agreed to by the parties.

(3) *Digital audio transmissions:* For preexisting digital subscription transmission services and preexisting satellite digital audio radio services:

(i) During a 60-day period commencing on July 1, 2001 and at 5-year intervals thereafter, or

(ii) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of subscription digital audio transmission service; and for an eligible nonsubscription service or a new subscription service:

(A) During a 60-day period prescribed by the Librarian in 1999,

(B) During a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter,

(C) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of eligible nonsubscription service or new subscription service, or

(D) As otherwise agreed to by the parties.

(4) *Phonorecords:* During 1997 and each subsequent tenth calendar year.

(5) *Digital phonorecord deliveries:* During 1997 and each subsequent fifth calendar year, or as otherwise agreed to by the parties.

(6) *Coin-operated phonorecord players (jukeboxes):* Within one year of the expiration or termination of a negotiated license authorized by *17 U.S.C. 116.*

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to *17 U.S.C. 801*(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the Federal Register on June 30, 1997, and at five year intervals thereafter.

(d) In the case of the satellite carrier compulsory license, rate adjustment proceedings shall commence on January 1, 1997, in accordance with *17 U.S.C. 119*(c)(3)(A), for satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with *17 U.S.C. 119*(c)(2).

Legislative History

[*59 FR 23991,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *61 FR 37213, 37215,* July 17, 1996; *63 FR 65555, 65556,* Nov. 27, 1998]

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries,and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

Legislative History

[*59 FR 23991,* May 9, 1994; *61 FR 37213, 37216,* July 17, 1996; *63 FR 65555, 65557,* Nov. 27, 1998]

§ 251.63 Consideration of petition; settlements.

(a) To allow time for the parties to settle their differences concerning cable, phonorecord, and jukebox rate adjustments, the Librarian of Congress shall, after the filing of the petition under § 251.62 and before the 45-day period specified in § 251.45(b)(2)(i), designate a 30-day period for negotiation of a settlement. The Librarian shall cause notice of the dates for that period to be published in the Federal Register.

(b) In the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

Legislative History

[*59 FR 23991,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *61 FR 37213, 37216,* July 17, 1996; *61 FR 63715, 63718,* Dec. 2, 1996]

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

After the end of the 45-day precontroversy discovery period, and after the Librarian has ruled on all motions and objections filed under § 251.45, the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the Federal Register a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting and the satellite carrier compulsory license in accordance with *17 U.S.C. 118* and 119, respectively. Such notice shall, to the extent feasible, describe the nature, general structure, and schedule of the proceeding.

Legislative History

[*59 FR 23991,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *65 FR 39819, 39820,* June 28, 2000]

§ 251.65 Deduction of costs of rate adjustment proceedings.

In accordance with *17 U.S.C. 802*(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

Legislative History

[*59 FR 23991,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994]

Subpart G --Royalty Fee Distribution Proceedings

§ 251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable *(17 U.S.C. 111),* satellite carrier *(17 U.S.C. 119),* and digital audio recording devices and media *(17 U.S.C. chapter 10).* Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

Legislative History

[*59 FR 23991,* May 9, 1994]

§ 251.71 Commencement of proceedings.

(a) *Cable.* In the case of royalty fees collected under the cable compulsory license *(17 U.S.C. 111),* any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers.* In the case of royalty fees collected under the satellite carrier compulsory license *(17 U.S.C. 119),* any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

Legislative History

[*59 FR 23992,* May 9, 1994]

§ 251.72 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the Federal Register a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

Legislative History

[*59 FR 23992,* May 9, 1994; redesignated at *59 FR 63042,* Dec. 7, 1994]

§ 251.73 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceeding, from the relevant royalty pool.

Legislative History

[*59 FR 23992,* May 9, 1994; redesignated at *59 FR 63042,* Dec. 7, 1994]

PART 252 --FILING OF CLAIMS TO CABLE ROYALTY FEES

AUTHORITY: *17 U.S.C. 111*(d)(4), 801, 803.

§ 252.1 Scope.

This part prescribes procedures under *17 U.S.C. 111*(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

Legislative History

[*59 FR 23992,* May 9, 1994, as corrected at *60 FR 8198,* Feb. 13, 1995]

§ 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

Legislative History

[*59 FR 23992,* May 9, 1994]

§ 252.3 Content of Claims.

(a) *Single claim*. A claim filed on behalf of a single copyright owner of a work or works secondarily transmitted by a cable system shall include the following information:

(1) The full legal name and address of the copyright owner entitled to claim the royalty fees.

(2) A general statement of the nature of the copyright owner's work or works, and identification of at least one secondary transmission by a cable system of such work or works establishing a basis for the claim.

(3) The name, telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the person or entity filing the single claim.

(4) An original signature of the copyright owner or of a duly authorized representative of the copyright owner.

(b) *Joint claim*. A claim filed on behalf of more than one copyright owner whose works have been secondarily transmitted by a cable system shall include the following information:

(1) A list including the full legal name and address of each copyright owner to the joint claim entitled to claim royalty fees.

(2) A concise statement of the authorization for the person or entity filing the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim as required by paragraph (b)(1) of this section.

(3) A general statement of the nature of the copyright owners' works and identification of at least one secondary transmission of one of the copyright owners' works by a cable system establishing a basis for the joint claim and the identification of the copyright owner of each work so identified.

(4) The name, telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the person filing the joint claim.

(5) Original signatures of the copyright owners to the joint claim or of a duly authorized representative or representatives of the copyright owners.

(c) In the event that the legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim changes after the filing of the claim, the Copyright Office shall be notified of the change. If the good faith efforts of the Copyright Office to contact the copyright owner or person or entity filing the claim are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) [Removed. See *59 FR 63042,* Dec. 7, 1994.]

Legislative History

[*59 FR 23992,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *66 FR 29700, 29703,* June 1, 2001]

§ 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20540, during normal business hours during the month of July; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a July date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

Legislative History

[*59 FR 23993,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *61 FR 63715, 63718,* Dec. 2, 1996; *63 FR 30634, 30635,* June 5, 1998; *65 FR 39819, 39820,* June 28, 2000]

§ 252.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to cable royalty fees.

Legislative History

[*59 FR 23993,* May 9, 1994]

PART 253 --USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

AUTHORITY: *17 U.S.C. 118,* 801(b)(1) and 803.

§ 253.1 General.

This part 304 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).

Legislative History

[*57 FR 60954,* Dec. 22, 1992, as redesignated at *59 FR 23993,* May 5, 1994; *63 FR 2142, 2144,* Jan. 14, 1998; *67 FR 77170, 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).

Legislative History

[*57 FR 60954,* Dec. 22, 1992, as redesignated at *59 FR 23993,* May 9, 1994]

§ 253.3 [Reserved]

[Reserved]

[Editor's Note: This section was removed and reserved by *67 FR 77170, 77171* (Dec. 17, 2002). Prior to removal, this section read as follows:

§ 253.3 Performance of musical compositions in the repertory of ASCAP and BMI by PBS and NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

(a) Scope. *This section shall apply to the performance during a period beginning January 1, 1998, and ending on December 31, 2002, by the Public Broadcasting Service (PBS), National Public Radio (NPR) and other public broadcasting entities (as defined in § 253.2) engaged in the activities set forth in 17 U.S.C. 118(d) of copyrighted*

published nondramatic musical compositions in the repertory of the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), except for public broadcasting entities covered by § § 253.5 and 253.6.

(b) Royalty rates. *The following annual royalty rates shall apply to the performance of published nondramatic musical compositions within the scope of this section: $ 3,320,000 to ASCAP, and $ 2,123,000 to BMI.*

(c) Payment of royalties. *The royalty payments specified in paragraph (b) of this section shall be made in two equal payments on July 31 and December 31 of each calendar year, except for 1998, in which year the royalty payments shall also be made in two equal installments, the first of which shall be made within thirty (30) days from the date the Librarian of Congress renders his decision in In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License*, Docket No. 96-6 CARP NCBRA, and the second of which shall be made on December 31, 1998, subject to *17 U.S.C. 802*(g).

(d) Identification of stations. *PBS, NPR and/or the Corporation for Public Broadcasting (CPB) shall annually for the years 1999-2002, by not later than January 31 of each such calendar year, and in 1998, within thirty (30) days of the date the Librarian of Congress renders the decision in In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License*, Docket No. 96-6 CARP NCBRA, furnish to ASCAP and BMI a complete list of all public broadcasting entities within the scope of this section, as of January 1 of that calendar year. Such lists shall include:

(1) A list of all public broadcasting entities operating as television broadcast stations that are associated with PBS ("PBS Stations"), and the PBS licensee with which each PBS Station is associated ("PBS Licensees"), identifying which PBS Licensees are Single Feed Licensees and which are Multiple Feed Licensees, and which PBS Stations or groups of stations are Independently Programmed Stations, as those terms are defined in paragraph (e)(2) of this section;

(2) A list of all public broadcasting entities operating as television broadcast stations that are not associated with PBS ("Non-PBS Stations");

(3) A list of all public broadcasting entities operating as radio broadcast stations that are associated with NPR ("NPR Stations"), which list shall designate which NPR Stations have six (6) or more full-time employees and which NPR Stations repeat one hundred (100) percent of the programming of another NPR Station; and

(4) A list of all public broadcasting entities operating as radio broadcast stations that are not associated with NPR ("Non-NPR Stations"), which list shall designate which Non-NPR Stations have six (6) or more full-time employees.

(5) For purposes of this section, Non-PBS Stations and Non-NPR Stations shall include, but not be limited to, public broadcasting entities operating as television and radio broadcast stations which receive or are eligible to receive general operational support from CPB pursuant to the Public Broadcasting Act of 1967, as amended.

(e) Records of use. *(1) PBS and NPR shall maintain and, within thirty-one (31) days after the end of each calendar quarter, furnish to ASCAP and BMI copies of their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs during the preceding quarter (including to the extent such information is reasonably obtainable by PBS and NPR the title, author, publisher, type of use, and manner of performance thereof). PBS and NPR will make a good faith effort to obtain the information to be listed on such cue sheets. In addition, to the extent the information is reasonably obtainable, PBS shall furnish to ASCAP and BMI the PBS programming feed schedules including, but not limited to, the PBS National Programming Service schedule. PBS and NPR shall make a good faith expeditious effort to provide the data discussed in this paragraph in electronic format where possible.*

(2) PBS Licensees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by a particular PBS Station owned by such PBS Licensee showing the title, author, and publisher of each composition, to the extent such information is reasonably obtainable; provided, however, that PBS Licensees shall not be responsible for providing cue sheets for programs for which cue sheets have already been provided by PBS to ASCAP and BMI. PBS Licensees will make a good faith effort to obtain the information to be listed on such music use reports. In the case where a PBS Licensee operates only one (1) or more PBS Stations each of which broadcasts simultaneously or on a delayed basis all or at least eighty-five (85) percent of the same programming (a "Single Feed Licensee"), that Single Feed Licensee will not be obligated to furnish music use reports to either ASCAP or to BMI for more than one of its PBS Stations in each calendar year. In the case where a PBS Licensee operates two (2) or more PBS Stations which do not broadcast all or at least eighty-five (85) percent of the same programming on a simultaneous or delayed basis (a "Multiple Feed Licensee"), that Multiple Feed Licensee

may be required to furnish a music use report for each PBS Station or group of stations which broadcasts less than eighty-five (85) percent of the same programming as that aired by any other PBS Station or group of stations operated by that Multiple Feed Licensee (such station or group of stations being referred to as an "Independently Programmed Station") in each calendar year. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from PBS Licensees covering a total number of PBS Stations equal to no more than fifty (50) percent of the total of the number of PBS Single Feed Licensees plus the number of Independently Programmed Stations operated by Multiple Feed Licensees; provided, however, that ASCAP and BMI shall be entitled to receive music use reports covering not less than ninety (90) PBS Stations in any given calendar year. Subject to the limitations set forth above, PBS Stations shall be obligated to furnish to ASCAP and BMI such music use reports for each station for a period of no more than seven days in each calendar year.

(3) Non-PBS Stations shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such Non-PBS Stations showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable. Non-PBS Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of Non-PBS Stations. Subject to the limitations set forth above, Non-PBS Stations shall be obligated to furnish to ASCAP and BMI such music use reports for each station for a period of no more than seven days in each calendar year.

(4) NPR Stations which have six (6) or more full-time employees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such NPR Station showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable; provided, however, that NPR Stations shall not be responsible for providing cue sheets for programs for which cue sheets have already been provided by NPR to ASCAP and BMI. NPR Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of NPR Stations which have six (6) or more full-time employees. Notwithstanding the foregoing, if the number of NPR Stations with six (6) or more employees (from which ASCAP and BMI shall initially designate and request reports) falls below twenty-five (25) percent of the total number of all NPR Stations, then ASCAP and BMI may each request reports from additional NPR Stations, regardless of the number of employees, so that ASCAP and BMI shall each be entitled to receive music use reports from not less than twenty-five (25) percent of all NPR Stations. NPR Stations shall be obligated to furnish music use reports for each station for a period of up to one week in each calendar year to ASCAP and BMI.

(5) Non-NPR Stations which have six (6) or more full-time employees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such Non-NPR Station showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable. Non-NPR Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of the Non-NPR Stations which have six (6) or more full-time employees. Notwithstanding the foregoing, if the number of Non-NPR Stations with six (6) or more employees (from which ASCAP and BMI shall initially designate and request reports) falls below twenty-five (25) percent of the total number of all Non-NPR Stations, then ASCAP and BMI may each request reports from additional Non-NPR Stations, regardless of the number of employees, so that ASCAP and BMI shall each be entitled to receive music use reports from not less than twenty-five (25) percent of all Non-NPR Stations. Non-NPR Stations shall be obligated to furnish music use reports for each station for a period of up to one week in each calendar year to ASCAP and BMI.]

Legislative History

[*63 FR 49823, 49836,* Sept. 18, 1998; *64 FR 36574, 36576,* July 7, 1999; removed and reserved, *67 FR 77170, 77171,* Dec. 17, 2002]

§ 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.

Legislative History

[*57 FR 60954,* Dec. 22, 1992, as redesignated and revised at *59 FR 23993,* May 9, 1994; *63 FR 2142, 2144,* Jan. 14, 1998; *67 FR 77170, 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, $ 249 annually.

(2) For all such compositions in the repertory of BMI, $ 249 annually.

(3) For all such compositions in the repertory of SESAC, $ 80 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.

Legislative History

[*57 FR 60954,* Dec. 22, 1992; *58 FR 63294,* Dec. 1, 1993; redesignated at *59 FR 23993,* May 9, 1994; *59 FR 60901,* Nov. 29, 1994; *60 FR 61654, 61655,* Dec. 1, 1995; *61 FR 60613,* Nov. 29, 1996; *63 FR 2142, 2145,* Jan. 14, 1998; *63 FR 66042,* Dec. 1, 1998; *64 FR 67187, 67188,* Dec. 1, 1999; *65 FR 75167,* Dec. 1, 2000; *66 FR 59698, 59699,* Nov. 30, 2001; *67 FR 71105,* Nov. 29, 2002; *67 FR 77170, 77171,* Dec. 17, 2002]

§ 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 calender year request more than 5 stations to furnish such reports.

Legislative History

[*57 FR 60954,* Dec. 22, 1992; redesignated at *59 FR 23993,* May 9, 1994, as corrected at *60 FR 8198,* Feb. 13, 1995; *63 FR 2142, 2145,* Jan. 14, 1998; *67 FR 77170, 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.

	2003-2007
Feature	$ 12.17

Concert feature (per half hour)	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:

	2003-2007
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.

Legislative History

[*57 FR 60954,* Dec. 22, 1993; *58 FR 7051,* Feb. 4, 1993; *58 FR 8820,* Feb. 17, 1993; *58 FR 67691,* Dec. 22, 1993; redesignated at *59 FR 23993,* May 9, 1994; *63 FR 2142, 2145,* Jan. 14, 1998; *63 FR 30634, 30635, 30636,* June 5, 1998; *67 FR 77170, 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:

Click here to view image.

(ii) For such uses in other than PBS-distributed programs:

Click here to view image.

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.

Legislative History

[*58 FR 60954,* Dec. 22, 1992; *58 FR 7051,* Feb. 4, 1993; redesignated at *59 FR 23993,* May 9, 1994; *63 FR 2142, 2145,* Jan. 14, 1998; *64 FR 36574, 36576,* July 7, 1999; *67 FR 77170, 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.

Legislative History

[*57 FR 60954,* Dec. 22, 1992; redesignated at *59 FR 23993,* May 9, 1994]

§ 253.10 Cost of living adjustment.

(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.

Legislative History

[*57 FR 60954,* Dec. 22, 1992; redesignated at *59 FR 23993,* May 9, 1994; *59 FR 63042,* Dec. 7, 1994; *63 FR 2142, 2145,* Jan. 14, 1998; *67 FR 77170, 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.

Legislative History

[*57 FR 60954,* Dec. 22, 1992; redesignated at *59 FR 23993,* May 5, 1994]

PART 254 --ADJUSTMENT OF ROYALTY RATE FOR COIN-OPERATED PHONORECORD PLAYERS

AUTHORITY: *17 U.S.C. 116,* 801(b)(1).

§ 254.1 General.

This part 254 establishes the complusory license fees for coin-operated phonorecord players beginning on January 1, 1982, in accordance with the provisions of *17 U.S.C. 116.*

Legislative History

[*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.

Legislative History

[*45 FR 890,* Jan. 5, 1981; redesignated at *59 FR 23993,* May 9, 1994; *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.

Legislative History

[*51 FR 27537,* Aug. 1, 1986, as amended at *55 FR 28197,* July 10, 1990; redesignated at *59 FR 23993,* May 9, 1994]

PART 255 --ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

AUTHORITY: *17 U.S.C. 801*(b)(1) and 803.

§ 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.*

Legislative History

[*46 FR 891,* Jan. 5, 1981; redesignated at *59 FR 23993,* May 9, 1994; *60 FR 61655, 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.

Legislative History

[*46 FR 891,* Jan. 5, 1981, as amended at *46 FR 62268,* Dec. 23, 1981; redesignated 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.

Legislative History

[*56 FR 56158,* Nov. 1, 1991; *58 FR 58283,* Nov. 1, 1993, as corrected at *58 FR 60787,* Nov. 18, 1993; redesignated and amended at *59 FR 23993,* May 9, 1994, as corrected at *59 FR 33201,* June 28, 1994, as corrected and revised at *60 FR 8198,* Feb. 13, 1995; *60 FR 34169,* June 30, 1995; *60 FR 55458, 55459,* Nov. 1, 1995; *63 FR 7288, 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. A digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

Legislative History

[*60 FR 61655, 61657,* Dec. 1, 1995]

§ 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.

Legislative History

[*60 FR 61655, 61657,* Dec. 1, 1995; *64 FR 6221, 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).

Legislative History

[*64 FR 6221, 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).

Legislative History

[*64 FR 6221, 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).

Legislative History

[*64 FR 6221, 6223,* Feb. 9, 1999]

PART 256 --ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

AUTHORITY: *17 U.S.C. 801*(b)(2) (A), (C) and (D) .

§ 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.*

Legislative History

[*47 FR 52159,* Nov. 19, 1982; redesignated at *59 FR 23993,* May 9, 1994, as corrected 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 2000 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).956 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).956 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3).630 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4).296 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 2000 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 $ 189,800 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 $ 189,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $ 7,400. 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 $ 189,800 but less than $ 379,600, the royalty fee payable under this paragraph shall be:

(i) 0.5 of 1 per centum of any gross receipts up to $ 189,800 and

(ii) 1 per centum of any gross receipts in excess of $ 189,800 but less than $ 379,600, 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.

Legislative History

[*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; *63 FR 30634, 30636,* June 5, 1998; *63 FR 39737, 39739,* July 24, 1998; *65 FR 39819, 39820,* June 28, 2000; *65 FR 64622, 64623,* Oct. 30, 2000]

PART 257 --FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

AUTHORITY: *17 U.S.C. 119*(b)(4).

§ 257.1 General.

This part prescribes the procedures under *17 U.S.C. 119*(b)(4) whereby parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Office.

Legislative History

[*54 FR 32811,* Aug. 10, 1989; redesignated and revised at *59 FR 23993,* May 9, 1994]

§ 257.2 Time of filing.

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

Legislative History

[*54 FR 32811,* Aug. 10, 1989; redesignated and revised at *59 FR 23994,* May 5, 1994]

§ 257.3 Content of Claims.

(a) *Single claim*. A claim filed on behalf of a single copyright owner of a work or works secondarily transmitted by a satellite carrier shall include the following information:

(1) The full legal name and address of the copyright owner entitled to claim the royalty fees.

(2) A general statement of the nature of the copyright owner's work or works, and identification of at least one secondary transmission by a satellite carrier of such work or works establishing a basis for the claim.

(3) The name, telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the person or entity filing the single claim.

(4) An original signature of the copyright owner or of a duly authorized representative of the copyright owner.

(b) *Joint claim*. A claim filed on behalf of more than one copyright owner whose works have been secondarily transmitted by a satellite carrier shall include the following information:

(1) A list including the full legal name and address of each copyright owner to the joint claim entitled to claim royalty fees.

(2) A concise statement of the authorization for the person or entity filing the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim as required by paragraph (b)(1) of this section.

(3) A general statement of the nature of the copyright owners' works, identification of at least one secondary transmission of one of the copyright owners' works by a satellite carrier establishing a basis for the joint claim, and the identification of the copyright owner of each work so identified.

(4) The name, telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the person filing the joint claim.

(5) Original signatures of the copyright owners to the joint claim or of a duly authorized representative or representatives of the copyright owners.

(c) In the event that the legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim changes after the filing of the claim, the Copyright Office shall be notified of the change. If the good faith efforts of the Copyright Office to contact the copyright owner or person or entity filing the claim are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) [Removed. See *59 FR 63043,* Dec. 7, 1994.]

Legislative History

[*54 FR 32811,* Aug. 10, 1989, as amended at *56 FR 2438,* Jan. 23, 1991; redesignated and revised at *59 FR 23994,* May 9, 1994; *59 FR 63043,* Dec. 7, 1994; *66 FR 29700, 29704,* June 1, 2001]

§ 257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20540, during normal business hours during the month of July; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a July date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

Legislative History

[*54 FR 32811,* Aug. 10, 1989, as amended at *56 FR 2438,* Jan. 23, 1991; redesignated and revised at *59 FR 23994,* May 9, 1994; *59 FR 63043,* Dec. 7, 1994; *61 FR 63715, 63718,* Dec. 2, 1996; *63 FR 30634, 30636,* June 5, 1998; *65 FR 39819, 39820,* June 28, 2000]

§ 257.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to satellite carrier royalty fees.

Legislative History

[*54 FR 32811,* Aug. 10, 1989; redesignated and revised at *59 FR 23994,* May 9, 1994]

§ 257.6 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Office. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

Legislative History

[*54 FR 32811,* Aug. 10, 1989; redesignated and revised at *59 FR 23994,* May 9, 1994]

PART 258 --ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

AUTHORITY: *17 U.S.C. 119,* 702, 802.

§ 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.*

Legislative History

[*57 FR 19053,* May 1, 1992; redesignated and amended at *59 FR 23994,* May 9, 1994; *63 FR 30634, 30636,* June 5, 1998]

§ 258.2 Definition of syndex-proof signal.

A satellite retransmission of a broadcast signal shall be deemed "syndex-proof" for purposes of § 258.3(b) if, during any semiannual 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.

Legislative History

[*57 FR 19053,* May 1, 1992; redesignated and amended at *59 FR 23994,* May 9, 1994]

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

(a) Commencing May 1, 1992, the royalty rate for the secondary transmission 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 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 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.

Legislative History

[*57 FR 19053,* May 1, 1992, as redesignated at *59 FR 23994,* May 9, 1994; *62 FR 55742, 55759,* Oct. 28, 1997; *64 FR 71659, 71660,* Dec. 22, 1999]

PART 259 --FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS;

AUTHORITY: *17 U.S.C. 1007*(a)(1).

§ 259.1 General.

This part prescribes procedures pursuant to *17 U.S.C. 1007*(a)(1), whereby interested copyright parties, as defined in *17 U.S.C. 1001*(7), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media pursuant to *17 U.S.C. 1006,* shall file claims with the copyright arbitration royalty panel and/or Librarian of Congress.

Legislative History

[*58 FR 6445,* Jan. 29, 1993; redesignated and amended at *59 FR 23994,* May 9, 1994, as corrected at *59 FR 33202,* June 28, 1994; *60 FR 8198,* Feb. 13, 1995]

§ 259.2 Time of filing.

(a) *General.* During January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Office. Claimants may file claims jointly or as a single claim.

(b) *Consequences of an untimely filing.* No royalty payments for the previous calendar year shall be distributed to any interested copyright party who has not filed a claim to such royalty payments during January or February of the following calendar year.

(c) *Authorization.* Any organization or association, acting as a common agent, shall be required to obtain from its members or affiliates separate, specific, and written authorization, signed by members, affiliates, or their representatives, to file claims to the Musical Works Fund or the Sound Recording Fund, apart from their standard agreements, for purposes of royalties filing and fee distribution. Such written authorization, however, will not be required for claimants to the Musical Works Fund where either:

(1) The agreement between the organization or association and its members or affiliates specifically authorizes such entity to represent its members or affiliates before the Copyright Office and/or the Copyright Arbitration Royalty Panels in royalty filing and fee distribution proceedings; or

(2) The agreement between the organization or association and its members or affiliates, as specified in a court order issued by a court with authority to interpret the terms of the contract, authorizes such entity to represent its members or affiliates before the Copyright Office and/or Copyright Arbitration Royalty Panels in royalty filing and fee distribution proceedings.

Legislative History

[*58 FR 6445,* Jan. 29, 1993; redesignated and amended at *59 FR 23994,* May 9, 1994, as corrected at *59 FR 33202,* June 28, 1994; suspended at *59 FR 63045,* Dec. 7, 1994; *60 FR 8198,* Feb. 13, 1995; *60 FR 61657, 61660,* Dec. 1, 1995; *61 FR 63715, 63718,* Dec. 2, 1996]

§ 259.3 Content of claims.

(a) Claims filed by interested copyright parties for digital audio recording devices and media royalty payments shall include the following information:

(1) The full legal name of the person or entity claiming royalty payments.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) A statement as to how the claimant fits within the definition of interested copyright party specified in *17 U.S.C. 1001*(7).

(4) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in *17 U.S.C. 1006*(b) and as to which Subfund of the Sound Recordings Fund (i.e., the copyright owners or featured recording artists Subfund) or the Musical Works Fund (i.e., the music publishers or writers Subfund) the claim is being made against as set forth in *17 U.S.C. 1006*(b)(1)-(2).

(5) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under title 17 U.S.C. that has been distributed (as that term is defined in *17 U.S.C. 1001*(6)), and that, during the period to which the royalty payments claimed pertain, has been (i) Distributed (as that term is defined in *17 U.S.C. 1001*(6)) in the form of digital musical recordings or analog musical recordings, or (ii) Disseminated to the public in transmissions.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the copyright arbitration royalty panel and/or Librarian of Congress of such change. If the good faith efforts of the copyright arbitration royalty panel and/or Librarian of Congress to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim.

(e) If an interested copyright party intends to file claims against more than one Subfund, each such claim must be filed separately with the Copyright Office. Any claim that purports to file against more than one subfund will be rejected.

Legislative History

[*58 FR 6445,* Jan. 29, 1993; redesignated and amended at *59 FR 23994,* May 9, 1994, as corrected at *59 FR 33202,* June 28, 1994; *59 FR 63043,* Dec. 7, 1994; *60 FR 8198,* Feb. 13, 1995; *64 FR 36574, 36576,* July 7, 1999]

§ 259.4 Content of notices regarding independent administrators.

(a) The independent administrator jointly appointed by the interested copyright parties, as defined in *17 U.S.C. 1001* (7)(A), and the American Federation of Musicians (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured musicians as defined in *17 U.S.C. 1006*(b)(1), shall file a notice informing the copyright arbitration royalty panel and/or Librarian of Congress of his/her name and address.

(b) The independent administrator jointly appointed by the interested parties, as defined in *17 U.S.C. 1001*(7)(A), and the American Federation of Television and Radio Artists (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured vocalists as defined in *17 U.S.C. 1006*(b)(1), shall file a notice informing the copyright arbitration royalty panel and/or Librarian of Congress of his/her full name and address.

(c) A notice filed under paragraph (a) or (b) of this section shall include the following information:

(1) The full name of the independent administrator;

(2) The telephone number and facsimile number, if any, full address, including a specific number and street name or rural route, of the place of business of the independent administrator.

(d) Notice shall bear the original signature of the independent administrator or a duly authorized representative of the independent administrator, and shall be filed with the Copyright Office no later than March 31 of each year, commencing with March 31, 1994.

(e) No notice may be filed by facsimile transmission.

Legislative History

[*58 FR 53826,* Oct. 18, 1993, as amended at *58 FR 67691,* Dec. 22, 1993. Redesignated and amended at *59 FR 23994, 23995,* May 9, 1994; *59 FR 33202,* June 28, 1994; *60 FR 8198,* Feb. 13, 1995]

§ 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue SE, Washington, DC 20540, during normal business hours during the month of January or February; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which the last day of February falls on Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after the last day of February, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a January or February date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

Legislative History

[*59 FR 23995,* May 9, 1994, as amended at *59 FR 63043,* Dec. 7, 1994; *61 FR 63718,* Dec. 2, 1996; *63 FR 30636,* June 5, 1998; *65 FR 39819, 39820,* June 28, 2000]

§ 259.6 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to digital audio recording devices and media royalty payments.

Legislative History

[*59 FR 23995,* May 9, 1994]

PART 260 --USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

Authority: *17 U.S.C. 114,* 801(b)(1).

§ 260.1 General.

(a) This part 260 establishes terms and rates of royalty payments for the public performance of sound recordings by nonexempt subscription digital transmission services in accordance with the provisions of *17 U.S.C. 114* and 801(b)(1).

(b) Upon compliance with *17 U.S.C. 114* and the terms and rates of this part, a nonexempt subscription digital transmission service may engage in the activities set forth in *17 U.S.C. 114.*

Legislative History

[*63 FR 25394, 25413,* May 8, 1998]

§ 260.2 Royalty fees for the digital performance of sound recordings.

(a) Commencing June 1, 1998, the royalty fee for the digital performance of sound recordings by nonexempt subscription digital services shall be 6.5% of gross revenues resulting from residential services in the United States.

(b) A nonexempt subscription digital transmission service (the "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.

(c)(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 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 (c)(1) (i) through (vii) of this section.

(2) Gross revenues shall include such payments as set forth in paragraphs (c)(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 (c)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(d) During any given payment period, the value of each performance of each digital sound recording shall be the same.

Legislative History

[*63 FR 25394, 25414,* May 8, 1998; *64 FR 36574, 36576,* July 7, 1999; *65 FR 39819, 39820,* June 28, 2000]

§ 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 twentieth 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 reasonable costs incurred in the administration of the distribution of the royalties, so long as the reasonable costs do not exceed the actual costs incurred by the collecting entity.

(e) Commencing June 1, 1998, and until such time as a new designation is made, the Recording Industry Association of America, Inc. shall be the agent receiving royalty payments and statements of account.

Legislative History

[*63 FR 25394, 25414,* May 8, 1998; *63 FR 30634, 30636,* June 5, 1998]

§ 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 subscription digital transmission 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 subscription digital transmission 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 subscription digital transmission 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 of the designated agent who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing their assigned duties during the ordinary course of business, 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 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. Confidential information shall be maintained in locked files.

(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.

Legislative History

[*63 FR 25394, 25414,* May 8, 1998]

§ 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. 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 subscription digital transmission 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.

Legislative History

[*63 FR 25394, 25414,* May 8, 1998]

§ 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 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 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 copyright owners who are entitled to receive royalty fees pursuant to *17 U.S.C. 114*(g), or their designated agents.

Legislative History

[*63 FR 25394, 25415,* May 8, 1998]

§ 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 the cost of the administration of the collection and distribution of the royalty fees.

Legislative History

[*63 FR 25394, 25415,* May 8, 1998; *64 FR 36574, 36576,* July 7, 1999]

PART 261 --RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS

AUTHORITY: *17 U.S.C. 112*(e), 114, 801(b)(1).

§ 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.

Legislative History

[*67 FR 45240, 45272,* July 8, 2002]

§ 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.

Legislative History

[*67 FR 45240, 45272,* July 8, 2002]

§ 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[cent] 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[cent] 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 [cent] 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 [cent] 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.

Legislative History

[*67 FR 45240, 45273,* July 8, 2002]

§ 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.

Legislative History

[*67 FR 45240, 45274,* July 8, 2002]

§ 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.

Legislative History

[*67 FR 45240, 45275,* July 8, 2002]

§ 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.

Legislative History

[*67 FR 45240, 45275,* July 8, 2002]

§ 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.

Legislative History

[*67 FR 45240, 45276,* July 8, 2002]

§ 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.

Legislative History

[*67 FR 45240, 45276,* July 8, 2002]

CUSTOMS REGULATIONS, TITLE 19, C.F.R.

PART 133 --TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

AUTHORITY: *17 U.S.C. 101,* 601, 602, 603; *19 U.S.C. 66,* 1624; *31 U.S.C. 9701.*

Section 133.1 also issued under *15 U.S.C. 1096,* 1124

Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under *15 U.S.C. 1124;*

Sections 133.21 through 133.25 also issued under *15 U.S.C. 1124, 19 U.S.C. 1526;*

Sections 133.26 and 133.46 also issued under *19 U.S.C. 1623;*

Sections 133.27 and 133.52 also issued under *19 U.S.C. 1526;*

Section 133.53 also issued under *19 U.S.C. 1558*(a).

SOURCE: *T.D. 72-266, 37 FR 20678,* Oct. 3, 1972, unless otherwise noted.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the United States Customs Service for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

Subpart A --Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent and Trademark Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 *(15 U.S.C. 1051* et seq.) except those registered on the supplemental register under the 1946 Act *(15 U.S.C. 1096),* may be recorded with the U.S. Customs Service if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § § 133.2, 133.5, 133.6, and 133.7 of this subpart.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) *Common ownership* means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) *Common control* means effective control in policy and operations and is not necessarily synonymous with common ownership.

(e) *Lever-rule protection.* For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States, 981 F.2d 1330 (D.C. Cir. 1993)),* a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. Customs determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) Customs will publish in the Customs Bulletin a notice listing any trademark(s) and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the request(s) before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the Customs Bulletin a notice that a trademark will receive *Lever*-rule protection with regard to a specific product.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-21, 64 FR 9058, 9062,* Feb. 24, 1999; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999; *T.D. 99-27, 64 FR 13673, 13675,* Mar. 22, 1999]

§ 133.3 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a U.S. Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8 X" x 101/2 X" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee.* The application shall be accompanied by a fee of $ 190 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation shall be $ 190 for each class for which the applicant desires to record the trademark with the United States Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of $ 570 is payable. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 73-174, 38 FR 16850,* June 27, 1973; *T.D. 75-160, 40 FR 28790,* July 9, 1975; *T.D. 84-133, 49 FR 26571,* June 28, 1984; *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date.* Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the U.S. Patent and Trademark Office.

(c) *Cancellation of recordation.* Recordation of a trademark with the United States Customs Service shall be canceled if the trademark registration is finally canceled or revoked.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the United States Customs Service, he shall apply therefor by:

(a) Complying with § 133.2;

(b) Describing any time limit on the rights of ownership transferred;

(c) Submitting a status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the new owner; and

(d) Paying a fee of $ 80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,* July 9, 1975; *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Intellectual Property Rights Branch, accompanied by:

(a) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name as changed; and

(b) A fee of $ 80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,* July 9, 1975; *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted Customs protection for trademarks, the trademark owner shall submit a written application to renew Customs recordation to the Intellectual Property Rights Branch not later than 3 months after the date of expiration of the current 20-year trademark registration issued by the U.S.Patent and Trademark Office. A timely application to renew a Customs recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with § § 133.5 and 133.6 of this part, and any change of addresses of owners or places of manufacture; and

(3) A fee of $ 80 for each renewal of a trademark recordation. Where the trademark covers several classes, a fee of $ 80 is required for each class. A check or money order shall be made payable to the United States Customs Service.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Intellectual Property Rights Branch, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the trademark owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of § § 133.2 and 133.3.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,* July 9, 1975; *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

Subpart B --Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the United States Customs Service. Words or designs used as trademarks, whether or not registered in the U.S. Patent and Trademark Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999; *T.D. 99-27, 64 FR 13673, 13675,* Mar. 22, 1999]

§ 133.13 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of $ 190 for each trade name to be recorded. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,* July 9, 1975; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the Federal Register and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the Federal Register and the Customs Bulletin.

§ 133.15 Term of Customs trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the Intellectual Property Rights Branch may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

Subpart C --Importations Bearing Registered and/or Recorded Trademarks or Recorded Trade Names

§ 133.21 Articles bearing counterfeit trademarks.

(a) *Counterfeit trademark defined.* A "counterfeit trademark" is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article of domestic or foreign manufacture imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the customs laws.

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] and provided pursuant to *19 CFR 133.21(d)* was (damaged/destroyed/lost) during examination, testing, or other use."

(e) *Failure to make appropriate disposition.* Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of part 171 of this chapter.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 79-159, 44 FR 31968,* June 4, 1979; *T.D. 90-98, 55 FR 52041,* Dec. 19, 1990; *T.D. 97-82, 62 FR 51766, 51770,* Oct. 3, 1997; *T.D. 99-21, 64 FR 9058, 9062,* Feb. 24, 1999]

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A "copying or simulating" trademark or trade name is one which may so resemble a recorded mark or name as to be likely to cause the public to associate the copying or simulating mark or name with the recorded mark or name.

(b) *Denial of entry.* Any articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a recorded mark or name shall be denied entry and subject to detention as provided in § 133.25.

(c) *Relief from detention of articles bearing copying or simulating trademarks.* Articles subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following circumstances are applicable:

(1) The objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(2) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(3) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraph (b) of this section or § 133.23(c) of this subpart, and such consent is furnished to appropriate Customs officials;

(4) The articles of foreign manufacture bear a recorded trademark and the one-item personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(1) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.26).

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in paragraph (c) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972; *T.D. 98-21, 63 FR 11996, 11999,* March 12, 1998; *T.D. 99-21, 64 FR 9058, 9062,* Feb. 24, 1999]

§ 133.23 Restrictions on importation of gray market articles.

(a) *Restricted gray market articles defined.* "Restricted gray market articles" are foreign-made articles bearing a genuine trademark or trade name identical with or substantially indistinguishable from one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States and imported without the authorization of the U.S. owner. "Restricted gray market goods" include goods bearing a genuine trademark or trade name which is:

(1) *Independent licensee.* Applied by a licensee (including a manufacturer) independent of the U.S. owner, or

(2) *Foreign owner.* Applied under the authority of a foreign trademark or trade name owner other than the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see § § 133.2(d) and 133.12(d) of this part), from whom the U.S. owner acquired the domestic title, or to whom the U.S. owner sold the foreign title(s); or

(3) *"Lever-rule".* Applied by the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see § § 133.2(d) and 133.12(d) of this part), to goods that the Customs Service has determined to be physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S. (as defined in § 133.2 of this part).

(b) *Labeling of physically and materially different goods.* Goods determined by the Customs Service to be physically and materially different under the procedures of this part, bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see § § 133.2(d) and 133.12(d) of this part), shall not be detained under the provisions of paragraph (c) of this section where the merchandise or its packaging bears a conspicuous and legible label designed to remain on the product until the first point of sale to a retail consumer in the United States stating that: "This product is not a product authorized by the United States trademark owner for importation and is physically and materially different from the authorized product." The label must be in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information designed to dispel consumer confusion may also be added.

(c) *Denial of entry.* All restricted gray market goods imported into the United States shall be denied entry and subject to detention as provided in § 133.25, except as provided in paragraph (b) of this section.

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in § 133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (in an instance covered by § § 133.2(d) and 133.12(d) of this part); and/or

(2) For goods bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner, that the merchandise as imported is not physically and materially different, as described in § 133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States; or

(3) Where goods are detained for violation of § 133.23(a)(3), as physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S., a label in compliance with § 133.23(b) is applied to the goods.

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in § 133.22(c) of this subpart or in paragraph (d) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 79-159, 44 FR 31968,* June 4, 1979; *T.D. 95-78, 60 FR 50020, 50032,* Sept. 27, 1995, as confirmed at *T.D. 99-27, 64 FR 13673, 13674,* Mar. 22, 1999; *T.D. 97-82, 62 FR 51766, 51770,* Oct. 3, 1997; *T.D. 99-21, 64 FR 9058, 9063* Feb. 24, 1999]

§ 133.23a [This section was removed. See *64 FR 9058, 9063,* Feb. 18, 1999.]

Legislative History

[T.D. 79-159, *44 FR 31968,* June 4, 1979; *T.D. 98-21, 63 FR 11996, 11999,* March 12, 1998]

§ 133.24 Restrictions on articles accompanying importer and mail importations.

(a) *Detention.* Articles accompanying an importer and mail importations subject to the restrictions of § § 133.22 and 133.23 shall be detained for 30 days from the date of notice that such restrictions apply, to permit the establishment of whether any of the circumstances described in § 133.22(c) or 133.23(d) are applicable.

(b) *Notice of detention*. Notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $ 250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Release of detained articles.*-- (1) *General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in § 133.22(c) or 133.23(d) of this subpart are established.

(2) *Articles accompanying importer*. Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $ 250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 73-175, 38 FR 17447,* July 2, 1973; *T.D. 74-227, 39 FR 32023,* Sept 4, 1974; *T.D. 84-213, 49 FR 41183,* Oct. 19, 1984; *T.D. 95-78, 60 FR 50020, 50032,* Sept. 27, 1995, as confirmed at *T.D. 99-27, 64 FR 13673, 13674,* Mar. 22, 1999; *T.D. 99-21, 64 FR 9058, 9063,* Feb. 24, 1999]

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of § § 133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved; and

(5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] and provided pursuant to *19 CFR 133.25(c)* was (damaged/destroyed/lost) during examination or testing for trademark infringement."

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of § 133.22 or § 133.23 shall be given the importer in writing.

Legislative History

[T.D. 97-91, *62 FR 61231, 61232,* Nov. 17, 1997; *T.D. 98-75, 63 FR 51296, 51297,* Sept. 25, 1998; *T.D. 99-21, 64 FR 9058, 9064,* Feb. 24, 1999]

§ 133.26 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.22 or § 133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

Legislative History

[T.D. 99-21, *64 FR 9058, 9064,* Feb. 24, 1999; *T.D. 99-64, 64 FR 43262, 43266,* Aug. 10, 1999]

§ 133.27 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark (within the meaning of § 133.21 of this subpart) as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed will not be more than the domestic value of the merchandise (see § 162.43(a) of this chapter) as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations*. For the second and each subsequent seizure of such merchandise, the fine imposed will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

Legislative History

[T.D. 99-21, *64 FR 9058, 9064,* Feb. 24, 1999]

Subpart D --Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record.* The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. "Copyright owner," with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(c) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 73-212, 38 FR 21397,* Aug. 8, 1973; *T.D. 87-40, 52 FR 9474,* Mar. 25, 1987]

§ 133.32 Application to record copyright.

An application to record a copyright to secure Customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting forth the circumstances of such actual or potential injury;

(c) The country of manufacture of genuine copies or phonorecords of the protected work;

(d) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, and a statement as to the exclusive rights authorized;

(e) The foreign title of the work, if different from the U.S. title; and

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container.

Legislative History

[T.D. 87-40, *52 FR 9474,* Mar. 25, 1987, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-27, 64 FR 13673, 13675,* Mar. 22, 1999]

§ 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An "additional certificate" of copyright registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the copyright owner identified in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing that the applicant has acquired copyright ownership in the copyright.

(2) Five photographic or other likenesses reproduced on paper approximately 8 X" x 101/2 X" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

(b) *Fee.* Each application shall be accompanied by a fee of $ 190 for each copyright to be recorded. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,* July 9, 1975; *T.D. 84-133, 49 FR 26571,* June 28, 1984; *T.D. 87-40, 52 FR 9475,* Mar. 25, 1987; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date.* Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of copyright shall remain in effect for 20 years unless the copyright ownership of the recordant expires before that time. If the ownership expires in less than 20 years, recordation shall remain in effect until the ownership expires. If the ownership has not expired after 20 years, recordation may be renewed as provided in § 133.37.

(c) *Cancellation.* Recordation of a copyright with the United States Customs Service shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 87-40, 52 FR 9475,* Mar. 25, 1987]

§ 133.35 Change of ownership of recorded copyright.

(a) *Application.* If the ownership of a recorded copyright is transferred and the owner wishes to continue the recordation with the United States Customs Service, he shall make written application to the Intellectual Property Rights Branch as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee.* The application shall be accompanied by:

(1) A certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the copyright; and

(2) A fee of $ 80, which covers all copyrights included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,*July 9, 1975; *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but no transfer of ownership, written notice specifying the change shall be given to the Intellectual Property Rights Branch accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of $ 80, which covers all copyrights included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 75-160, 40 FR 28791,* July 9, 1975; *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]

§ 133.37 Renewal of copyright recordation.

(a) *Term of renewal.* If a recorded copyright has a term which exceeds the original 20-year recordation, continued Customs protection may be obtained by renewing the recordation. The renewed recordation shall remain in effect for 20 years, unless the recordant's copyright ownership expires sooner, in which case it shall remain in effect until the ownership expires. There is no limit to the number of times recordation of a subsisting copyright may be renewed.

(b) *Application for renewal*. An application to renew recordation shall be made no later than 3 months before the date the recordation then in effect expires. The application shall be in writing addressed to the Intellectual Property Rights Branch.

(c) *Materials to be submitted with application.* An application to renew Customs recordation shall include:

(1) Proof that the recordant's copyright ownership is valid. The proof required shall vary with the date that the work was first copyrighted as follows:

(i) *Works in which copyright subsists on or after January 1, 1978.* An affidavit signed by the recordant attesting to the continued validity of the copyright, stating the date the copyright was registered with the U.S. Copyright Office, whether the author of the work is still alive and, if not, the date of his death, and any additional information that Customs may require of the recordant.

(ii) *Works under statutory copyright on December 31, 1977.* If the copyright is still in its first term when recordation expires, a certificate of registration issued by the U.S. Copyright Office or, if the copyright has been renewed, a certificate of renewal registration issued by the U.S. Copyright Office.

(2) A statement describing any change of ownership or name of owner, in compliance with § § 133.35 and 133.36, and any change of address of the owner.

(3) Payment of a fee of $ 80. A check or money order shall be made payable to the U.S. Customs Service.

(d) *Untimely application.* If the recordant fails to submit a renewal application at least 3 months before the recordation expires, he may not renew the recordation. The recordant shall be required to reapply to record the copyright in accordance with the procedures and requirements of § § 133.32 and 133.33.

Legislative History

[T.D. 87-40, *52 FR 9475,* Mar. 25, 1987, as amended by *T.D. 91-77, 56 FR 46115,* Sept. 10, 1991]

Subpart E --Importations Violating Copyright Laws

§ 133.41 [Reserved]

[Reserved]

§ 133.42 Infringing copies or phonorecords.

(a) *Definition.* Infringing copies or phonorecords are "piratical" articles, i.e., copies or phonorecords which are unlawfully made (without the authorization of the copyright owner).

(b) *Importation prohibited.* The importation of infringing copies or phonorecords of works copyrighted in the U.S. is prohibited by Customs. The importation of lawfully made copies is not a Customs violation.

(c) *Seizure and forfeiture.* The port director shall seize any imported article which he determines is an infringing copy or phonorecord of a copyrighted work protected by Customs. The port director also shall seize an imported article if the importer does not deny a representation that the article is an infringing copy or phonorecord as provided in § 133.43(a). In either case, the port director also shall institute forfeiture proceedings in accordance with Part 162 of this chapter. Lawfully made copies are not subject to seizure and forfeiture by Customs.

(d) *Disclosure.* When merchandise is seized under this section, Customs shall disclose to the owner of the copyright the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(e) *Samples available to the copyright owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination, testing, or any other use in pursuit of a related private civil remedy for copyright infringement. To obtain a sample under this section, the copyright owner must furnish to Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to *19 CFR 133.42(e)* was (damaged/destroyed/lost) during examination, testing, or other use."

(f) *Referral to the U.S. Attorney.* In the event that phonorecords or copies of motion pictures arrive in the U.S. bearing counterfeit labels, Customs officers should consider referring the violation to the U.S. Attorney, Department of Justice, for possible criminal prosecution pursuant to the "Piracy and Counterfeiting Amendments Act of 1982" *(18 U.S.C. 2318).* This law provides a minimum fine of $ 25,000 or imprisonment for not more than one year, or both, for willful infringement of a copyright for commercial advantage, and a maximum fine of $ 250,000 or imprisonment for not more than 5 years, or both, where trafficking in counterfeit labels for phonorecords or copies of motion pictures or other audiovisual works is involved.

Legislative History

[T.D. 87-40, *52 FR 9475,* Mar. 25, 1987; *52 FR 10668,* Apr. 2, 1987; *T.D. 95-78, 60 FR 50020, 50032,* Sept. 27, 1995, as confirmed at *T.D. 99-27, 64 FR 13673, 13674,* Mar. 22, 1999; *T.D. 97-30, 62 FR 19492, 19493,* April 22, 1997; *T.D. 98-21, 63 FR 11996, 12000,* March 12, 1998]

§ 133.43 Procedure on suspicion of infringing copies.

(a) *Notice to the importer.* If the port director has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The port director also shall advise the importer that in the absence of receipt within 30 days of a denial by the importer that the article constitutes an infringing copy or phonorecord, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner.* If the importer of suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the port director shall furnish to the copyright owner the following information, if available, within 30 days, excluding weekends and holidays, of the receipt of the importer's denial:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The country of origin of the merchandise; and

(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director:

(i) A written demand for the exclusion from entry of the detained imported article; and

(ii) A bond, in the form and amount specified by the port director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee determines that the article is not an infringing copy prohibited importation under section 602 of the Copyright Act of 1976 *(17 U.S.C. 602)*(See part 113 of this chapter).

(c) *Samples available to the copyright owner*. At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to *19 CFR 133.43(c)* was (damaged/destroyed/lost) during examination or testing for copyright infringement.

(d) *Result of action or inaction by copyright owner.* After notice to the copyright owner that delivery is being withheld for imported articles suspected of being infringing copies of his recorded copyrighted work, the port director shall proceed in accordance with the following procedures:

(1) *Demand and bond; exchange of briefs.* If the copyright owner files a written demand for exclusion of the suspected infringing copies together with a proper bond, the port director shall promptly notify the importer and copyright owner that, during a specified time limited to not more than 30 days, they may submit any evidence, legal briefs or other pertinent material to substantiate the claim or denial of infringement. The burden of proof shall be upon the party claiming that the article is in fact an infringing copy.

(i) *Exchange of briefs.* Before timely submitting the additional evidence, legal briefs, or other pertinent material to Customs, pursuant to paragraph (c)(1) of this section, in regard to the disputed claim of infringement, the importer and the copyright owner shall first provide each other with a copy of all such information, including the importer's denial of infringement and the copyright owner's demand for exclusion. The subsequent submission of this information to Customs shall be accompanied by a written statement confirming that a copy has already been provided to the opposing party. The port director shall notify the importer and the copyright owner that they shall have additional time, not to exceed 30 days, in which to provide a response to the arguments submitted by the opposing party, and that rebuttal arguments, timely submitted, shall be fully considered in the decision-making process. During this rebuttal period and before timely submitting the rebuttal arguments to Customs, the importer and the copyright owner shall first provide each other with a copy of all such material. The submission of this rebuttal material to Customs shall be accompanied by a written statement confirming that a copy has been provided to the opposing party. The port director shall not accept any additional material from the parties to substantiate the claim or denial of infringement after the final 30-day rebuttal period expires.

(ii) *Decision.* Upon receipt of rebuttal arguments, or 30 days after notification if no rebuttal arguments are submitted, the port director shall forward the entire file, together with a sample of each style that is considered possibly infringing, to Customs Headquarters, (Attention: International Trade Compliance Division, Office of Regulations and Rulings), for decision on the disputed claim of infringement. The final decision on the disputed claim of infringement shall be forwarded to the port director who shall send a copy thereof to the copyright owner as well as to the importer.

(2) *Infringement disclaimed or unsupported.* If the copyright owner disclaims that the specified imported article is an infringing copy of his recorded copyrighted work, or fails to present sufficient evidence or proof to substantiate a claim of infringement, the port director shall release the detained shipment to the importer and all further importations of the same article, by whomever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the district director shall release the detained articles to the importer and notify the copyright owner of the release.

(4) *Withdrawal of bond.* Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

(e) *Alternative procedure: court action.* As an alternative to the administrative procedure described in this section, the copyright owner, whether or not he has recorded his copyright with Customs, may seek a court order enjoining importation of the article. To obtain Customs enforcement of an injunction, the copyright owner shall submit a certified copy of the court order to the Commissioner of Customs, Attention: Office of the Chief Counsel, Washington, DC 20229. In addition, if the copyright in question is not recorded with Customs, the copyright owner shall submit the $ 190 fee required by § 133.33(b) and, if the work is a three-dimensional or other work not readily identifiable by title and author, 5 photographic or other likenesses reproduced on paper approximately 8" X 10 1/2" in size.

Legislative History

[T.D. 87-40, *52 FR 9475,* Mar. 25, 1987; *T.D. 93-87, 58 FR 57740,* Oct. 27, 1993; *T.D. 95-78, 60 FR 50020, 50032,* Sept. 27, 1995, as confirmed at *T.D. 99-27, 64 FR 13673, 13674,* Mar. 22, 1999; *T.D. 98-21, 63 FR 11996, 12000,* March 12, 1998, as corrected at *T.D. 98-21, 63 FR 15088,* March 30, 1998]

§ 133.44 Decision of disputed claim of infringement.

(a) *Claim of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is an infringing copy, the port director shall seize the imported article and institute forfeiture proceedings in accordance with Part 162 of this chapter. The bond of the copyright owner shall be returned.

(b) *Denial of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not an infringing copy, the port director shall release all detained merchandise and transmit the copyright owner's bond to the importer.

Legislative History

[T.D. 87-40, *52 FR 9476,* Mar. 25, 1987; *T.D. 95-78, 60 FR 50020, 50032,* Sept. 27, 1995, as confirmed at *T.D. 99-27, 64 FR 13673, 13674,* Mar. 22, 1999; *T.D. 97-30, 62 FR 19492, 19493,* April 22, 1997]

§ 133.45 [Reserved]

[Reserved]

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the director of the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 73-175, 38 FR 17447,* July 2, 1973; *T.D. 74-227, 39 FR 32023,* Sept. 4, 1974; *T.D. 84-213, 49 FR 41183,* Oct. 19, 1984; *T.D. 95-78, 60 FR 50020, 50032,* Sept. 27, 1995, as confirmed at *T.D. 99-27, 64 FR 13673, 13674,* Mar. 22, 1999; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999; *T.D. 99-64, 64 FR 43262, 43266,* Aug. 10, 1999]

Subpart F --Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24 or § 133.46.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles:

(3) In the case of books or periodicals manufactured abroad contrary to the terms of the "American manufacturing clause" of the Copyright Act of 1976 *(17 U.S.C. 602,* 603):

(i) Satisfactory evidence is submitted that a statement of abandonment has been filed and recorded in the Copyright Office by the copyright owner in accordance with the procedures of the Copyright Office; and

(ii) The notice of copyright is completely obliterated prior to release of the books or periodicals.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 79-159, 44 FR 31968,* June 4, 1979; *T.D. 87-40, 52 FR 9476,* Mar. 25, 1987]

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of *19 U.S.C. 1526* shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

Legislative History

[T.D. 79-159, *44 FR 31969,* June 4, 1969; *T.D. 94-90, 59 FR 55997,* Nov. 10, 1994; *T.D. 97-91, 62 FR 61231, 61232,* Nov. 17, 1997; *T.D. 98-75, 63 FR 51296, 51297,* Sept. 25, 1998]

§ 133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter.

Legislative History

[T.D. 72-266, *37 FR 20678,* Oct. 3, 1972, as amended by *T.D. 73-175, 38 FR 17447,* July 2, 1973; *T.D. 99-24, 64 FR 11376,* Mar. 9, 1999]