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- (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) 0.893 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

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system located wholly outside a top 100 television market, the current base rate shall apply.

- (3) A cable system whose semiannual gross receipts for secondary transmissions totaled \$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 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

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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 in within sixty-five 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 expended 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 308.2(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.

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- (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:

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- (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, as provided for in paragraph (c)(1) of this section, or before September 1, 1980, whichever is later. 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, in accordance with the following requirements:
 - (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

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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. Any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of such royalties by submitting a written request to the Chief, Licensing Division, Copyright Office, Library of Congress, Washington DC 20557 no later than March 1, 1995.

(17 U.S.C. 111, 702, 708) [43 FR 27832, June 27, 1978]

Editorial Note: For Federal Register citations affecting § 201.17, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Effective Date Note: At 57 FR 3296, Jan. 29, 1992, § 201.17 was amended by adding paragraph (k) effective January 1, 1994.

37 CFR 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, as amended by Pub. L. 94-553, 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 coowners. In such cases, the service of a Notice of Intention on any one of the coowners under paragraph (e)(2) of this section shall be sufficient with respect to all co-owners.

(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;

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- (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, 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.

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- (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 a fee of \$12. 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 acknowledgment of receipt and filing will be provided to the sender. Upon request and payment of an additional fee of \$8, 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 acknowledgment 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 a fee of \$8, a Certificate of Filing will be provided to the sender.

(17 U.S.C. 115, 702, 708) [45 FR 79045, Nov. 28, 1980, as amended at 56 FR 59885, Nov. 26, 1991]

37 CFR 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)(3) of Title 17 of the United States Code, as

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amended by Pub. L. 94-553, and required by that section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works.

- (2) An Annual Statement of Account is a statement identified in section 115(c)(3) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be filed for every compulsory license to make and distribute phonorecords of nondramatic musical works.
- (3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner means any one of the coowners. In such cases, the service of a Statement of Account, on one coowner under paragraph (e)(7) or (f)(7) of this section shall be sufficient with respect to all coowners.
- (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, as amended by Pub. L. 94-553.
- (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.
- (6) 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.
- (7) 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.

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(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

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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.

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- (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 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; or
 - 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);

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- (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).
- (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, as amended by Pub. L. 94-553, 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 GAAP. 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

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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.

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.

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- (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 acknowledgment of receipt and filing will be provided to the sender.
 - (B) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under § 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 a fee of \$8, 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, as amended by Pub. L. 94-553, 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

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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, as amended by Pub. L. 94-553, 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:

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- (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)(ii)(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

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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

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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 a fee of \$8, 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.

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

[45 FR 79046, Nov. 28, 1980, as amended at 56 FR 7813, Feb. 26, 1991; 56 FR 59885, Nov. 26, 1991]

37 CFR 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

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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:

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- (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

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- 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 acknowledgments appearing near the front or back of the collective work as a whole.

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

- (1) 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

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.

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- (iv) at or immediately preceding the end of the work.
- (2) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (h)(1) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.
- (3) In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in addition to the locations specified in paragraph (h)(1) of this section, on the housing or container, if it is a permanent receptacle for the work.
- (i) Pictorial, graphic, and sculptural works. The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:
 - (1) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, of the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.
 - (2) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.
 - (3) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce.
 - (4) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied:
 - (i) To the reproduction itself;
 - (ii) to the margin, selvage, or reverse side of the material at frequent and regular intervals; or
 - (iii) if the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.
 - (5) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

*(17 U.S.C. 401, 702)**[46 FR 58312, Dec. 1, 1981]*

*Copyright Laws and Regulations***37 CFR 201.21 [Reserved]****37 CFR 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

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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 at least ten days but not more than thirty days before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).
 - (2) Service of the Advance Notice may be effected by any of the following methods:
 - (i) Personal service;
 - (ii) First-class mail; or
 - (iii) Telegram, cablegram, or similar form of communication, if:
 - (A) The Advance Notice meets all of the other conditions provided by this section; and
 - (B) before the first fixation and simultaneous transmission take place, the person responsible for the potential infringement receives written confirmation of the Advance Notice, bearing the actual handwritten signature of the copyright owner or duly authorized agent.
 - (3) The date of service is the date the Advance Notice of Potential Infringement is received by the person responsible for the potential infringement or by any agent or employee of that person.

(17 U.S.C. 411, 702) [46 FR 28849, May 29, 1981]

37 CFR 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