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unpublished works for the purposes stated in paragraph (a) of this section at the time of registration or at any time thereafter; Provided, That:

- (1) A facsimile reproduction of the entire copyrightable content of the deposit shall be made a part of the Copyright Office records before transfer to the Library of Congress as provided by section 704(c) of Title 17 of the United States Code, as amended by Pub. L. 94-553, unless, within the discretion of the Register of Copyrights, it is considered impractical or too expensive to make the reproduction;
- (2) All unpublished copyright deposits retained by the Library of Congress in its collections shall be maintained under the control of the Library of Congress with appropriate safeguards against unauthorized copying or other unauthorized use of the deposits which would be contrary to the rights of the copyright owner in the work under Title 17 of the United States Code, as amended by Pub. L. 94-553; and
- (3) At the time selection is made a request for full term retention of the deposit under the control of the Copyright Office has not been granted by the Register of Copyrights, in accordance with section 704(e) of Title 17 of the United States Code, as amended by Pub. L. 94-553.

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

[45 FR 41414, June 19, 1980]

37 CFR 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 judgment, fulfillment of the request would lead to violation of the copyright law.

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

[56 FR 7812, Feb. 26, 1991]

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(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

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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. For a statement covering no more than one title, the basic recording fee is \$20. An additional charge of \$10.00 is made for each group of not more than 10 titles. For these purposes the term "title" refers to an identification of the work of visual art which is covered by the statement.

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

[56 FR 38341, Aug. 13, 1991]

37 CFR 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

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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.** For a document covering no more than one title, the basic recording fee is \$20. An additional charge of \$10 is made for each group of not more than 10 titles. For these purposes the term "title" refers to each computer shareware program covered by the document.

(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.

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- (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.

[58 FR 29107, May 19, 1993]

37 CFR 201.27 Initial Notice of Distribution of Digital Audio Recording Devices or Media.

(a) **General.** This section prescribes rules pertaining to the filing of an Initial Notice of Distribution in the Copyright Office as required by section 1003(b) of the Audio Home Recording Act of 1992, Public Law 102-563, title 17 of the United States Code, to obtain a statutory license to import and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium in the United States.

(b) **Definitions-**

- (1) An Initial Notice of Distribution of Digital Audio Recording Devices or Media or Initial Notice is a notice under section 1003(b) of the Audio Home Recording Act of 1992, Public Law 102-563, title 17 of the United States Code, which is required by that section to be filed in the Copyright Office by an importer or manufacturer of a digital audio recording device or digital audio recording medium who has not previously filed notice of the importation or manufacture for distribution of such device or medium in the United States.
- (2) The product category of a device or medium is a general class of products made up of functionally equivalent digital audio recording devices or media with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units ("boomboxes"); portable personal recorders; stand-alone home recorders ("tape decks"); home combination systems ("rack systems"); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media such as 2 1/2," 3" and 5" discs.
- (3) The technology of a device or medium is a product type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassette, (DCC), or recordable compact discs, including minidisks (MD).
- (4) The terms digital audio recording device, digital audio recording medium, distribute, manufacture, and transfer price, have the meanings of the same terms as they are used in section 1001 of the Copyright Act, title 17 of the United States Code, as amended by Public Law 102-563.

(c) **Forms.** An Initial Notice form may be obtained from the Copyright Office free of charge, by contacting the Licensing Division of the Copyright Office, Washington, DC 20557.

(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

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- recording device or medium, of or 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.

[57 FR 55465, Nov. 25, 1992]

37 CFR 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

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royalty fees in the Copyright Office as required by 17 U.S.C. 1003(c) and 1004, in order to import and distribute, or manufacture and distribute, in the United States any digital audio recording device or digital audio recording medium.

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

- (1) Annual statement of account is the statement required under 17 U.S.C. 1003, to be filed no later than two months after the close of the accounting period covered by the annual statement.
- (2) Device and medium have the same meaning as digital audio recording device and digital audio recording medium, respectively, have in 17 U.S.C. 1001.
- (3) Digital audio recording product means digital audio recording devices and digital audio recording media.
- (4) Generally accepted auditing standards (GAAS), means the auditing standards promulgated by the American Institute of Certified Public Accountants.
- (5) Manufacturing or importing party refers to any person or entity that manufactures and distributes, and/or imports and distributes, any digital audio recording device or digital audio recording medium in the United States, and is required under 17 U.S.C. 1003 to file with the Copyright Office quarterly and annual Statements of Account.
- (6) Product category of a device or medium is a general class of products made up of functionally equivalent digital audio recording products with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units ("boomboxes"); portable personal recorders; stand-alone home recorders ("tape decks"); home combination systems ("rack systems"); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media, such as 2 1/2 inch, 3 inch, or 5 inch discs.
- (7) Primary auditor is the certified public accountant retained by the manufacturing or importing party to audit the amounts reported in the annual Statement of Account submitted to the Copyright Office. The primary auditor may be the certified public accountant engaged by the manufacturing or importing party to perform the annual audit of the party's financial statement.
- (8) Quarterly statement of account is the statement accompanying royalty payments required under 17 U.S.C. 1003, to be filed for each of the first three quarters of the accounting year, and no later than 45 days after the close of the quarterly period covered by the statement.
- (9) Technology of a device or medium is a digital audio recording product-type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassettes (DCC), or recordable compact discs, including minidisks (MD).
- (10) Distribute, manufacture, transfer price, and serial copying have the meanings set forth in 17 U.S.C. 1001.

(c) Accounting periods and filing deadlines

- (1) Election of filing basis. Statements of Account may be filed on either a calendar or fiscal year basis at the election of the manufacturing party. The election of a calendar or fiscal year basis must be made when the manufacturing or importing party files its first quarterly Statement of Account by appropriate designation on the Form DART/Q submitted. Thereafter the specific calendar or fiscal-year accounting period must be designated on each quarterly Statement of Account. The filing basis may be changed at any time upon notification in writing to the Register of Copyrights, accompanied by a statement of reasons as to why the change is to be made and a statement that such change will not affect the aggregate royalties due

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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,