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- month, and year of the period covered by the quarter;
- (iii) The full legal name of the manufacturing and/or importing party, together with any "doing-business-as" names used by such person or entity for the purpose of conducting the business of manufacturing, importing, or distributing digital audio recording products;
  - (iv) The full mailing address of the manufacturing or importing party, including a specific number and street name, or rural route and box number, of the place of business of the person or entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location;
  - (v) A designation of the manufacturing or importing party status, i.e., "Manufacturer," "Importer," or "Manufacturer and Importer;"
  - (vi) The designation "Product Categories" together with the product categories of the digital audio recording products manufactured or imported and distributed during the quarter covered by the statement;
  - (vii) The designation "Technologies" together with the technologies of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;
  - (viii) The designation "Series or Model Number" followed by the model or series numbers of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;
  - (ix) The "fee code" associated with the product;
  - (x) The "source code" for the product category;
  - (xi) The "transfer price" of the product;
  - (xii) The "number of units distributed" for each product;
  - (xiii) The "minimum fee per unit" for each product;
  - (xiv) The statutory royalty "rate" for digital audio recording devices or media;
  - (xv) The "rate fee" for each product;
  - (xvi) The appropriate "maximum fee per unit" for each product;
  - (xvii) The "maximum fee" for each product; and
  - (xviii) A computation of the total royalty payable for the quarter covered by the statement. Filing parties may not round off the figures they list in Space C, the computation section of the form, except for the figure representing the total royalty fee due; in that case, numbers ending in 50 to 99 cents may be rounded up to the next dollar, and numbers ending in one to 49 cents may be rounded down to the next dollar;
- (3) Royalty payments and accounting.
- (i) The royalty specified in 17 U.S.C. 1004 shall accompany the quarterly and annual Statements of Account. No royalty is payable for redistribution of the same product item unless a credit has been taken for such items. Where royalties are payable for the period covered by the statement, the Statement of Account shall contain the following information for each unique combination of product category, technology, series or model number, fee code, source code, and transfer price:
    - (A) The total number of digital audio recording media distributed, multiplied by the statutory royalty rate of three percent (3%) of the transfer price;

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- (B) The total number of digital audio recording devices distributed for which the statutory royalty rate of two percent (2%) of the transfer price is payable, multiplied by such percentage rate of the transfer price;
  - (C) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to eight dollars (\$8.00), multiplied by such eight dollar amount;
  - (D) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to twelve dollars (\$12.00), multiplied by such twelve dollar amount; and
  - (E) The total number of digital audio recording devices distributed for which the statutory minimum royalty is limited to one dollar (\$1.00), multiplied by such one dollar amount.
- (ii) The amount of the royalty payment shall be calculated in accordance with the instructions specified in the quarterly Statement of Account form. Payment of the royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights.
- (4) Reduction of royalty fee.
- (i) Section 1004(a)(2)(A) of title 17 U.S. Code, provides an instance in which royalty payments may be reduced if the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.
  - (ii) Notice of this provision together with directions for possible application to a product is contained in the DART/Q Form.
- (5) Contact party. Each Statement of Account shall include the name, address, and telephone and facsimile (FAX) numbers of an individual whom the Copyright Office can write or call about the Statement of Account.
- (6) Credits for returned or exported products. When digital audio recording products first distributed in the United States for ultimate transfer to United States consumers are returned to the manufacturer or importer as unsold or defective merchandise, or are exported, the manufacturing or importing party may take a credit to be deducted from the royalties payable for the period when the products were returned or exported. The credit may be taken only for returns or exports made within two years following the date royalties were paid for the products. This credit must be reflected in the manufacturing or importing party's quarterly or annual Statement of Account. If the manufacturer or importer later redistributes in the United States any products for which a credit has been taken, these products must be listed on the Statement of Account, and a new computation of the royalty fee must be made based on the transfer price of the products at the time of the new distribution.
- (7) Oath and signature. Each Statement of Account shall include the handwritten signature of an authorized officer, principal, or agent of the filing party. The signature shall be accompanied by:
- (i) The printed or typewritten name of the person signing the quarterly Statement of Account;
  - (ii) The date the document is signed;
  - (iii) The following certification:  
I, the undersigned, hereby certify that I am an authorized officer,

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principal, or agent of the "manufacturing or importing party" identified in Space B. Penalties for fraud and false statements are provided under 18 U.S.C. 1001 et. seq.

- (f) Contents of annual Statements of Account
- (1) General contents. Each annual Statement of Account shall be filed on form DART/A, "Annual Statement of Account for Digital Audio Recording Products." It must be filed by any importer or manufacturer that distributed in the United States, during a given calendar or fiscal year, any digital audio recording device or digital audio recording medium. The annual statement shall cover the aggregate of the distribution of devices and media for the entire year corresponding to the calendar or fiscal year elected. The annual Statement of Account shall contain the information, oath, and certification prescribed in paragraphs (e)(2)(i) through (e)(7)(iii) of this section, and shall cover the entire accounting year, including the fourth quarter distribution, and shall also provide for the reconciliation of the aggregated accounting of digital audio recording devices and media for the reported accounting year.
  - (2) Reconciliation. Any royalty payment due under sections 1003 and 1004 of title 17 that was not previously paid with the filing party's first three quarterly Statements of Account, shall be reconciled in the annual statement. Reconciliation in the annual Statement of Account provides for adjustments for reductions, refunds, underpayments, overpayments, credits, and royalty payments paid in Quarters 1, 2, and 3, and shall be computed in accordance with the instructions included in the annual Statement of Account. Errors that require reconciliation shall be corrected immediately upon discovery.
  - (3) Accountant's opinion. Each annual Statement of Account or any amended annual Statement of Account shall be audited by the primary auditor as defined in paragraph (b)(7) of this section. An amendment may be submitted to the Office either as a result of responses to questions raised by a Licensing Division examiner or on the initiative of the manufacturing or importing party to correct an error in the original Statement of Account.
    - (i) The audit shall be performed in accordance with generally accepted auditing standards (GAAS). The audit may be performed in conjunction with an annual audit of the manufacturing or importing party's financial statements.
    - (ii) The CPA shall issue a report, the "primary auditor's report," reflecting his or her opinion as to whether the annual statement presents fairly, in all material respects, the number of digital audio recording devices and media that were imported and distributed, or manufactured and distributed, by the manufacturing or importing party during the relevant year, and the amount of royalty payments applicable to them under 17 U.S.C. chapter 10, in accordance with that law and these regulations.
    - (iii) The primary auditor's report shall be filed with the Copyright Office together with the annual Statement of Account, within two months after the end of the annual period for which the annual Statement of Account is prepared. The report may be qualified to the extent necessary and appropriate.
    - (iv) The Copyright Office does not provide a specific form, or require a specific format, for the CPA's review; however, in addition to the above, certain items must be named as audited items. These include the variables necessary to complete Space C of the Statement of Account form. The CPA may place his or her opinion, which will serve as the "primary auditor's report," in the space provided on Form DART/A, or may attach a separate sheet or sheets containing the opinion.
    - (v) The auditor's report shall be signed by an individual, or in the name of a

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partnership or a corporation, and shall include city and state of execution, certificate number, jurisdiction of certificate, and date of opinion. The certificate number and jurisdiction are not required if the report is signed in the name of a partnership or a corporation.

(g) Documentation. All filing parties shall keep and retain in their possession, for at least three years from the date of filing, all records and documents necessary and appropriate to support fully the information set forth in quarterly and annual statements that they file.

(h) Corrections, supplemental payments, and refunds

- (1) General. Upon compliance with the procedures and within the time limits set forth in this paragraph (h), corrections to quarterly and annual Statements of Account will be placed on record, and supplemental royalty fee payments will be received for deposit, or refunds without interest will be issued, in the following cases:
  - (i) Where, with respect to the accounting period covered by the quarterly or annual Statement of Account, any of the information given in the statement filed in the Copyright Office is incorrect or incomplete; or
  - (ii) Where, for any reason except that mentioned in paragraph (h)(2) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.
- (2) Corrections to quarterly or annual Statements of Account will not be placed on file, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, cases where digital audio recording media were exported) took place later.
- (3) Requests that corrections to annual or quarterly Statements of Account be accepted, that fee payments be accepted, or that refunds be issued shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:
  - (i) The request shall be made in writing and must clearly identify the manufacturing or importing party making the request, the accounting period in question, and the purpose of the request. A request for a refund must be received in the Copyright Office before the expiration of two months from the last day of the applicable Statement of Account filing period. A request made by telephone or by telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, is received in the Copyright Office within the two-month period, and a written request meeting all the conditions of this paragraph (h)(3) is also received in the Copyright Office within 14 days after the end of such two-month period.
  - (ii) The request must clearly identify the incorrect or incomplete information formerly filed and must provide the correct or additional information.
  - (iii) In the case where a royalty fee was miscalculated and the amount deposited with the Copyright Office was too large or too small, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with 28 U.S.C. 1746, made and signed in accordance with paragraph (e)(7) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.
  - (iv) Following final processing, all requests will be filed with the original Statement of Account in the records of the Copyright Office. Nothing

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

- (v)(A) The request must be accompanied by a filing fee in the amount of \$20 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or a certified check, cashier's check, or money order, payable to the Register of Copyrights. No request will be processed until the appropriate filing fees are received.
    - (B) Requests that a supplemental royalty fee payment be deposited must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.
  - (vi) All requests submitted under paragraph (h) of this section must be signed by the manufacturing or importing party named in the Statement of Account, or the duly authorized agent of that party in accordance with paragraph (e)(7) of this section.
  - (vii) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the manufacturing or importing party named in the Statement of Account. The Copyright Office will not pay interest on any royalty refunds.
- (i) Examination of Statements of Account by the Copyright Office
    - (1) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division will examine the statement for obvious errors or omissions appearing on the face of the documents and will require that any such obvious errors or omissions be corrected before final processing of the document is completed. If, as the result of communications between the Copyright Office and the manufacturer or importer, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record.
    - (2) Completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall not be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty was deposited, that the statutory time limits for filing had been met, or that any other requirements of 17 U.S.C. 1001 et. seq. were fulfilled.
  - (j) Interest on late payments or underpayments
    - (1) Royalty payments submitted as a result of late payments or underpayments shall include interest, which shall begin to accrue on the first day after the close of the period for filing Statements of Account for all late payments or underpayments of royalties occurring within that accounting period. The accrual period for interest shall end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by the manufacturing or importing party, if the payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business

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days of its date, the accrual period shall end on the date of actual receipt by the Copyright Office.

- (2) The interest rate applicable to a specific accounting period shall be the Current Value of Funds rate in accordance with the Treasury Financial Manual, at 1 TFM 6-8025.40, in effect on the first business day after the close of the filing deadline for the relevant accounting period. The interest rate for a particular accounting period may be obtained by consulting the Federal Register for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.
- (3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is five dollars (\$5.00) or less.

(k) Confidentiality of Statements of Account. Public access to the Copyright Office files of Statements of Account for digital audio recording products shall not be provided. Access will only be granted to interested copyright parties in accordance with regulations prescribed by the Register of Copyrights pursuant to 17 U.S.C. 1003(c).

[58 FR 9546, Feb. 22, 1993]

**37 CFR 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.**

(a) General. This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required in 17 U.S.C. 104A(a). On or after January 3, 1995, the Copyright Office will publish in the Federal Register a list of works for which potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

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

- (1) Effective filing. To be effective a Statement of Intent must be complete and timely.
- (2) Eligible work means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.
- (3) Fixed means a work 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101
- (4) Potential copyright owner means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.
- (5) Published means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

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(c) Forms. The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) Requirements for effective Statements of Intent

(1) The document should be clearly designated as a "Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement".

(2) Statements of Intent must include:

- (i) the title(s) of the work(s) for which copyright restoration is sought, including any underlying work(s) that has a title(s) different from the title of the motion picture, provided all works are owned by the same potential copyright owner;
- (ii) the nation of first fixation;
- (iii) the nation of first publication;
- (iv) the date of first publication;
- (v) the name and mailing address (and telephone and telefax, if applicable) of the potential copyright owner of the work; (vi) the following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

\_\_\_\_\_ (insert Mexico or Canada)

and understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice required by U.S. copyright law. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: \_\_\_\_\_

Name (Printed or Typed): \_\_\_\_\_

Date: \_\_\_\_\_

(3) If copyright restoration is sought for an underlying work only, the Statement of Intent must specify the kind of underlying work covered and give the title if different from the title of the motion picture.

(4) More than one motion picture may be included in a single Statement of Intent provided the potential copyright owner is the same for all the motion pictures. The information required in Section 201.31 (d)(2)(i) through (d)(2)(iv) must be given for each work.

(5) Sports programs that do not have a title can be identified in a Statement of Intent by giving the sporting event, the team names and the date (month, day and year).

(6) Statements of Intent must be received in the Copyright Office on or before December 31, 1994.

(7) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.

(e) Fee. The Copyright Office is not requiring a fee for the processing of Statements of Intent.

(f) Effective date of restoration of copyright protection.

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- (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.
- (2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the Federal Register of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) Registration of works whose copyright has been restored. After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

**37 CFR 201.32 Fees for Copyright Office special services.**

The Copyright Office has established the following fees for the special services indicated:

Special services -- Fees

1. Special handling fee ..... \$330.
2. Full-term storage fee..... \$270
3. Surcharge for expedited Certifications and Documents Section services (per hour)
  - a. Additional certificates..... 50
  - b. In-process searches ..... 50
  - c. Copy of assignment ..... 50
  - d. Certification..... 50
  - e. Copy of deposit (stored off site)..... 70 (first hour)  
..... 50 (each additional hour)
  - f. Copy of correspondence file (stored in Madison  
Building or at an off-site storage facility) ..... 70 (first hour)  
..... 50 (each additional hour)
  - g. Copy of deposit or correspondence file (stored at  
Federal Records Center ..... 135 (first hour)  
..... 50 (each additional hour).)
4. Surcharge for expedited Reference and Bibliography searches:
  - a. First hour ..... 100
  - b. Each additional hour ..... 50