

initiate a section 914 proceeding if additional information is required.

(b) If an interim order under section 914 has been issued, the information obtained during the section 914 proceeding will be used in evaluating the request for a section 902 proclamation.

(c) After the Commissioner receives the request of a foreign government for a section 902 proclamation, or after a determination is made by the Commissioner to initiate independently an evaluation pursuant to § 150.2(a) of this part, a notice will be published in the FEDERAL REGISTER to request relevant and material comments on the adequacy and effectiveness of the protection afforded U.S. mask works under the system of law described in the notice. Comments should include detailed explanations of any alleged deficiencies in the foreign law or any alleged deficiencies in its implementation. If the alleged deficiencies include problems in administration such as registration, the respondent should include as specifically as possible full detailed explanations, including dates for and the nature of any alleged problems. Comments shall be submitted to the Commissioner within sixty (60) days of publication of the FEDERAL REGISTER notice.

(d) The Commissioner shall notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the initiation of an evaluation under these regulations.

(e) If the written comments submitted by any party present relevant and material reasons why a proclamation should not issue, the Commissioner will:

(1) Contact the party raising the issue for verification and any needed additional information;

(2) Contact the requesting foreign government to determine if the issues raised by the party can be resolved; and,

(i) If the issues are resolved, continue with the evaluation; or,

(ii) If the issues cannot be resolved on this basis, hold a public hearing to gather additional information.

(f) The comments, the section 902 request, information obtained from a section 914 proceeding, if any, and information obtained in a hearing held pursuant to paragraph (e)(ii) of this section, if any, will be evaluated by the Commissioner.

(g) The Commissioner will forward the information to the Secretary, together with an evaluation and a draft recommendation.

(h) The Secretary will forward a recommendation regarding the issuance of a section 902 proclamation to the President.

§ 150.5 Duration of proclamation.

(a) The recommendation for the issuance of a proclamation may include terms and conditions regarding the duration of the proclamation.

(b) Requests for the revision, suspension or revocation of a proclamation may be submitted by any interested party. Requests for revision, suspension or revocation of a proclamation will be considered in substantially the same manner as requests for the issuance of a section 902 proclamation.

§ 150.6 Mailing address.

Requests and all correspondence submitted pursuant to these guidelines shall be addressed to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

SUBCHAPTER A—COPYRIGHT OFFICE AND PROCEDURES

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SUBCHAPTER A—COPYRIGHT OFFICE AND PROCEDURES

PART 201—GENERAL PROVISIONS

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AUTHORITY: 17 U.S.C. 702.

§201.1 Communications with the Copyright Office.

(a) *In general.* Mail and other communications shall be addressed to the Register of Copyrights, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000.

(b) *Inquiries to Licensing Division.* Inquiries about filings related to the four compulsory licenses (17 U.S.C. 111, 115, 118, and 119) should be addressed to the

Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

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

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

[50 FR 30170, July 24, 1985, as amended at 60 FR 34168, June 30, 1995; 62 FR 35420, July 1, 1997; 62 FR 40457, July 29, 1997]

§ 201.2 Information given by the Copyright Office.

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

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

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

(b) *Inspection and copying of records.* (1) Inspection and copying of completed records and indexes relating to a registration or a recorded document, and inspection of copies or identifying material deposited in connection with a

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

(2) It is the general policy of the Copyright Office to deny direct public access to in-process files and to any work (or other) areas where they are kept. However, direct public use of computers intended to access the automated equivalent of limited portions of these files is permitted on a specified terminal in the Records Maintenance Unit, LM B-14, 8:30 a.m. to 5:00 p.m., Monday through Friday, upon payment of applicable fees.

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

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

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

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

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

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

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

(C) The name of the remitter.

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

(4) Access will be afforded as follows to pending applications for registration, the deposit material accompanying them, and pending documents for recordation that were submitted

within the twelve month period immediately preceding the request for access:

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

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

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

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

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

(7) The Copyright Office maintains administrative staff manuals referred to as its "Compendium of Office Practices I" and "Compendium of Office Practices II" for the general guidance of its staff in making registrations and recording documents. The manuals, as amended and supplemented from time to time, are available for purchase from the National Technical Information Service (Compendium I) and the Government Printing Office (Compendium II). They are also available for public inspection and copying in the Certifications and Documents Section.

(c) *Correspondence.* (1) Official correspondence, including preliminary applications, between copyright claim-

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

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

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

(4) The Copyright Office will return unanswered any abusive or scurrilous correspondence.

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

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

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

(iii) A clear identification of the specific records to be copied. Requests

should include the following specific information, if possible:

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

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

- (i) The Copyright Office receives written authorization from the copyright claimant of record or his or her designated agent, or from the owner of any of the exclusive rights in the copyright as long as this ownership can be demonstrated by written documentation of the transfer of ownership.
- (ii) The Copyright Office receives a written request from an attorney on behalf of either the plaintiff or defendant in connection with litigation, actual or prospective, involving the copyrighted work. The following information must be included in such a request:

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

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

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

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

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

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

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

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

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

(2) *Special service fee.* This is a fee for a special service not specified in title 17, which the Register of Copyrights may fix at any time on the basis of the cost of providing the service, as provided by 17 U.S.C. 708(a)(10).

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

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

Registration, recordation and related services	Fees
(1) Basic registrations: Form TX, Form VA, Form PA, Form SE, (including Short Forms), and Form SR	\$30
(2) Registration of a claim in a group of contribution to periodicals (GR/CP)	30
(3) Registration of a renewal claim (Form RE):	
Claim without Addendum	45
Addendum	15
(4) Registration of a claim in a Mask Work	75
(5) Registration of a claim in a group of series (Form SE/Group) \$30 minimum	10
(6) Registration of a claim in a group of daily newspapers, and qualified newsletters (Form G/DN)	55
(7) Registration of a restored copyright (Form GATT)	30
(8) Registration of a claim in a group of restored works (Form GATT Group) \$30 minimum	10
(9) Registration of a correction or amplification to a claim (Form CA)	65
(10) Providing an additional certificate of registration	25
(11) Any other certification, per hour	65
(12) Search—report prepared from official records, per hour	65
(13) Search—locating Copyright Office records, per hour	65
(14) Recordation of documents (single title)	50
Additional titles (per group of 10 titles)	15
(15) Recordation of a notice of intention (NIE) to enforce a restored copyright containing no more than one title	30
Additional NIE titles (each)	1
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12
(17) Issuance of a receipt for a deposit	4

¹ Per issue.

² Per claim.

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

Special services	Fees
(1) Service charge for deposit account overdraft	\$70
(2) Service charge for dishonored deposit account replenishment check	35
(3) Service charge for insufficient fee	(¹)
(4) Appeals:	
(i) First appeal	200
Additional claim in related group	20
(ii) Second appeal	500
Additional claim in related group	20
(5) Secure test processing charge, per hour	60
(6) Copying charge, 15 pages or fewer	15
Each additional page over 1550
(7) Inspection charge	65
(8) Special handling fee for a claim	500
Each additional claim using the same deposit	50
(9) Special handling fee for recordation of a document	330
(10) Full-term storage of deposits	365
(11) Surcharge for expedited Certifications and Documents Section services:	
(i) Additional certificates, per hour	75
(ii) In-process searches, per hour	75
(iii) Copy of assignment or other document, per hour	75
(iv) Certification, per hour	75
(v) Copy of registered deposit:	
First hour	95
Each additional hour	75
(vi) Copy of correspondence file:	
First hour	95
Each additional hour	75
(12) Surcharge for expedited Reference & Bibliography Section searches:	
First hour	125
Each additional hour	95

¹ Reserved.

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

Licensing division services	Fees
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115)	\$12
(2) Certificate of Filing a Notice of Intention (17 U.S.C. 115)	8
(3) Filing Fee for Recordation of License Agreements under 17 U.S.C. 118	50
(4) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States	50
(5) Initial Notice of Digital Transmission of Sound Recording (17 U.S.C. 114)	20
Amendment of 17 U.S.C. 114 Notice	20
(6) Statement of Account Amendment (Cable Television Systems and Satellite Carriers, 17 U.S.C. 111 and 119)	15
(7) Statement of Account Amendment (Digital Audio Recording Devices or Media, 17 U.S.C. 1003)	20
(8) Using Public Photocopier, per page25
Photocopies Made by Licensing Staff, per page40
(9) Search, per hour	65
(10) Certification of Search Report	65

[64 FR 29520, June 1, 1999]

§201.4 Recordation of transfers and certain other documents.

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

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

(ii) Notices of identity and signal carriage complement, and statements of account, of cable systems (17 U.S.C. 111(d); see 37 CFR 201.11; 201.17);

(iii) Original, signed notices of intention to obtain compulsory license to make and distribute phonorecords of nondramatic musical works (17 U.S.C. 115(b); see 37 CFR 201.18);

(iv) License agreements, and terms and rates of royalty payments, voluntarily negotiated between one or more public broadcasting entities and certain owners of copyright (17 U.S.C. 118; see 37 CFR 201.9);

(v) Notices of termination (17 U.S.C. 203, 304(c); see 37 CFR 201.10); and

(vi) Statements regarding the identity of authors of anonymous and pseudonymous works, and statements relating to the death of authors (17 U.S.C. 302).

(2) A *transfer of copyright ownership* has the meaning set forth in section 101 of Title 17 of the United States Code, as amended by Pub. L. 94-553. A document shall be considered to “pertain to a copyright” if it has a direct or indirect

relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

(3) For purposes of this section:

(i) A *sworn certification* is an affidavit under the official seal of any officer authorized to administer oaths within the United States, or if the original is located outside of the United States, under the official seal of any diplomatic or consular officer of the United States or of a person authorized to administer oaths whose authority is proved by the certificate of such an officer, or a statement in accordance with section 1746 of Title 28 of the United States Code; and

(ii) An *official certification* is a certification, by the appropriate Government official, that the original of the document is on file in a public office and that the reproduction is a true copy or the original.

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

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

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

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

(i) A document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached to the document or made a part of it shall be recordable only if the attachment is also submitted for recordation with the document or if the reference is deleted by the parties to the document. If a document has been submitted for recordation and has been returned by the Copyright Office at the request of the sender for deletion of the reference to an attachment, the document will be recorded only if the deletion is signed or initialed by the persons who executed the document or by their authorized representatives. In exceptional cases a document containing a reference to an attachment will be recorded without the attached material and without deletion of the reference if the person seeking recordation submits a written request specifically asserting that:

(A) The attachment is completely unavailable for recordation; and

(B) The attachment is not essential to the identification of the subject matter of the document; and

(C) It would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference.

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

(ii) If a document otherwise recordable under this indicates on its face that it is a self-contained part of a

larger instrument (for example: if it is designated "Attachment A" or "Exhibit B"), the Copyright Office will raise the question of completeness, but will record the document if the person requesting recordation asserts that the document is sufficiently complete as it stands.

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

(3) To be recordable, the document must be legible and capable of being reproduced in legible microform copies.

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

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

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

[43 FR 35044, Aug. 8, 1978, as amended at 53 FR 123, Jan. 5, 1988; 56 FR 59885, Nov. 26, 1991; 64 FR 29521, June 1, 1999]

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

(a) *General*. (1) This section prescribes conditions relating to the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration, under section 408(d) of Title 17 of the United States Code, as amended by Pub. L. 94-553. For the purposes of this section:

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

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

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

(C) A registration of claim to copyright made under Title 17 of the United

States Code as it existed before January 1, 1978; or

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

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

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

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

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

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

(ii) An *amplification* is appropriate:

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

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

(iii) Supplementary registration is not appropriate:

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

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

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

(c) *Form and content of application for supplementary registration.* (1) An application for supplementary registration shall be made on a form prescribed by the Copyright Office, shall be accompanied by the appropriate fee identified

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

in §201.3(c) and shall contain the following information:

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

(ii) The registration number of the basic registration;

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

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

(v) In the case of a correction:

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

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

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

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

(vi) In the case of an amplification:

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

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

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

(vii) The name and address:

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

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

(viii) A certification. The certification shall consist of:

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

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

(C) A statement that the person signing the application is the author, other copyright claimant or owner of exclusive right(s) in the work, or the authorized agent of such author, other claimant, or owner, and that the statements

made in the application are correct to the best of that person's knowledge.

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

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

(d) *Effect of supplementary registration.*

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

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

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

[43 FR 773, Jan. 4, 1978, as amended at 56 FR 59885, Nov. 26, 1991; 57 FR 60482, Dec. 21, 1992; 60 FR 34168, June 30, 1995; 62 FR 35421, July 1, 1997; 63 FR 59236, Nov. 3, 1998; 63 FR 66042, Dec. 1, 1998; 64 FR 29521, June 1, 1999]

§201.6 Payment and refund of Copyright Office fees.

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

the registration or other record shall be expunged.

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

(c) *Refunds.* Money remitted to the Copyright Office for original, basic, supplementary or renewal registration will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the statutory fee will be refunded, but amounts of \$50 or less will not be refunded unless specifically requested, and refunds of less than \$2 may be made in postage stamps. Before making any refund for fees remitted in relation to nonregistration copyright services, the Copyright Office shall deduct an administrative processing fee in an amount equivalent to one hour of the requested service, or the minimum fee set by statute for the service.

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

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

[24 FR 4955, June 18, 1959, as amended at 46 FR 25442, May 7, 1981; 56 FR 7813, Feb. 26, 1991; 59 FR 38371, July 28, 1994]

§201.7 Cancellation of completed registrations.

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

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

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

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

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

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

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

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

(4) Where registration has been made for a work which appears to be copyrightable but after registration the Copyright Office becomes aware that, on the administrative record before the Office, the statutory requirements have apparently not been satisfied, or

that information essential to registration has been omitted entirely from the application or is questionable, or correct deposit material has not been deposited, the Office will correspond with the copyright claimant in an attempt to secure the required information or deposit material or to clarify the information previously given on the application. If the Copyright Office receives no reply to its correspondence within 30 days of the date the letter is mailed, or the response does not resolve the substantive defect, the registration will be cancelled. The correspondence will include the reason for the cancellation. The following are instances where a completed registration will be cancelled unless the substantive defect in the registration can be cured:

(i) Eligibility for registration has not been established;

(ii) A work published before March 1, 1989, was registered more than 5 years after the date of first publication and the deposit copy or phonorecord does not contain a statutory copyright notice;

(iii) The deposit copies or phonorecords of a work published before January 1, 1978 do not contain a copyright notice or the notice is defective;

(iv) A renewal claim was registered after the statutory time limits for registration had apparently expired;

(v) The application and copy(s) or phonorecord(s) do not match each other and the Office cannot locate a copy or phonorecord as described in the application elsewhere in the Copyright Office or the Library of Congress;

(vi) The application for registration does not identify a copyright claimant or it appears from the transfer statement on the application or elsewhere that the "claimant" named in the application does not have the right to claim copyright;

(vii) A claim to copyright is based on material added to a preexisting work and a reading of the application in its totality indicates that there is no copyrightable new material on which to base a claim;

(viii) A work subject to the manufacturing provisions of the Act of 1909 was apparently published in violation of those provisions;

(ix) For a work published after January 1, 1978 the only claimant given on the application was deceased on the date the application was certified;

(x) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified; and

(xi) Statements on the application conflict or are so unclear that the claimant cannot be adequately identified.

(d) *Minor substantive errors.* Where a registration includes minor substantive errors or omissions which would generally have been rectified before registration, the Copyright Office will attempt to rectify the error through correspondence with the remitter. Except in those cases enumerated in paragraph (c) of this section, if the Office is unable for any reason to obtain the correct information or deposit copy the registration record will be annotated to state the nature of the informality and show that the Copyright Office attempted to correct the registration.

[50 FR 40835, Oct. 7, 1985, as amended at 60 FR 34168, June 30, 1995]

§ 201.8 [Reserved]

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

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

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

of that party, that the reproduction is a true copy;

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

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

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

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

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

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

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

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

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

(b) *Contents.* (1) A notice of termination must include a clear identification of each of the following:

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

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

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

(iv) The effective date of termination; and

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

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

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

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

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

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed

by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under clauses (1) and (2) of section 304(c) of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

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

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

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

(2) The service provision of section 304(c)(4) of Title 17, U.S.C., will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

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

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

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

performing rights society identifying the person or persons claiming current ownership of the rights being terminated.

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

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

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

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

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

(ii) The copy submitted for recordation shall be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice.

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

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

(4) Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met.

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

[42 FR 45920, Sept. 13, 1977, as amended at 56 FR 59885, Nov. 26, 1991; 60 FR 34168, June 30, 1995; 64 FR 29521, June 1, 1999]

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

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by the satellite carrier license of section 119(b)(1) of title 17 of the United States Code, as amended by Pub. L. 103-369, in order that certain secondary transmissions by satellite carriers for private home viewing be subject to statutory licensing.

(b) *Definitions.* (1) The terms *distributor*, *network station*, *private home viewing*, *satellite carrier*, *subscriber*, *superstation*, and *unserved household* have the meanings set forth in section 119(d) of title 17 of the United States Code, as amended by Pub. L. 103-369.

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

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

the January 1 through June 30 accounting period, and by not later than the immediately following January 30, if the Statement of Account covers the July 1 through December 31 accounting period.

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

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

(4) In the Register's discretion, four years after the close of any calendar year, the Register may close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any

subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

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

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

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

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

(2) The designation "Owner" followed by:

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

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

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

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

(4) The designation "Superstations," followed by:

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

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

(5) The designation "Network Stations," followed by:

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

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

(6) The total number of subscribers to each superstation for the six-month period covered by the Statement multiplied by the statutory royalty rate of 17.5 cents per subscriber, or in the case of syndex-proof superstations as defined in 37 CFR 258.2, 14 cents (or in lieu thereof, the arbitrated rate, if applicable).

(7) The total number of subscribers to each network station for the six-month period covered by the Statement multiplied by the statutory royalty rate of six (6) cents per subscriber (or, in lieu thereof, the arbitrated rate, if applicable).

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

(9) The handwritten signature of:

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

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

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

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

(B) The date of signature;

(C) If the owner of the satellite carrier is a partnership or a corporation,

by the title or official position held in the partnership or corporation by the person signing the Statement of Account;

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

(E) The following statement:

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

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

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

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

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

(ii) Where calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds

will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a signal) took place later.

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

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

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

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

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

information and provide the correct or additional information:

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

(iv)(A) All requests filed under this paragraph (g) must be accompanied by a filing fee in the amount of \$15 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

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

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

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier

owner named in the Statement of Account without regard to the time limitations provided for in paragraph (g)(3)(i) of this section.

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

(h) *Interest.* (1) Royalty fee payments submitted as a result of late or amended filings will include interest. Interest will begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing occurring within that accounting period. The accrual period will end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by a satellite carrier, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period will end on the date of actual receipt by the Copyright Office.

(2)(i) The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the FEDERAL REGISTER, in effect on the first business day after the close of the filing deadline for that accounting period. 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

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by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.11(h) in effect on June 30, 1992.

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

[54 FR 27877, July 3, 1989, as amended at 55 FR 49998, Dec. 4, 1990; 56 FR 29589, June 28, 1991; 57 FR 61834, Dec. 29, 1992; 59 FR 67635, Dec. 30, 1994; 60 FR 34168, June 30, 1995; 60 FR 57937, Nov. 24, 1995; 63 FR 30635, June 5, 1998]

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

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

(1) It shall be an original instrument of contract; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the contract, or an authorized representative of that party, that the reproduction is a true copy;

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

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

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

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

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office and a filing in

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the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

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

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

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

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

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

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

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

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

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

the source was considered private or confidential;

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

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

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

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

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

(iii) If the copyright owner or owners of all works covered by the blanket notice is not identified in the Notice, the Notice shall include an offer to identify, by name and last known address, the owner or owners of any and all such

works, upon request made to the individual referred to in paragraph (c)(2)(ii) of this section.

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

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

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

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

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

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

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

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

(i) Personal service;

(ii) First-class mail;

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

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

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

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

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

[42 FR 64684, Dec. 28, 1977]

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

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

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

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

NOTICE WARNING CONCERNING COPYRIGHT
RESTRICTIONS

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

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

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

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

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

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

[42 FR 59265, Nov. 16, 1977]

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

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

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

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

REPRODUCTION FOR USE OF BLIND OR
PHYSICALLY HANDICAPPED PERSONS

Signature of this form at space 10, and a check in one of the boxes here in space 8, constitutes a nonexclusive grant of permission to the Library of Congress to reproduce

and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

a ☐ Copies and phonorecords; b ☐ Copies only; c ☐ Phonorecords only.

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

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

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

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

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

(5) Copies and phonorecords reproduced and distributed under this license will contain identification of the author and publisher of the work, and copyright notice, as they appear on the

copies or phonorecords deposited with the application.

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

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

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

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

(17 U.S.C. 408, 702, 710)

[45 FR 13073, Feb. 28, 1980, as amended at 60 FR 34168, June 30, 1995]

§ 201.16 [Reserved]**§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.**

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

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

(2) A *cable system* is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a “cable system” for copyright purposes, even if the FCC excludes it from being consid-

ered a “cable system” because of the number or nature of its subscribers or the nature of its secondary transmissions. The statements of account and royalty fees to be deposited under § 201.17 of this section, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees. For these purposes, and the purpose of § 201.17 of this section, an “individual” cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either:

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

(ii) Operating from one headend.

(3) *FCC* means the Federal Communications Commission.

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

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

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

(5) The terms *primary transmission*, *secondary transmission*, *local service area of a primary transmitter*, *distant signal*

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

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

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

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

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

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

(i) All of its activated television channels are used exclusively for the

secondary transmission of television signals; and

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

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

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

for a compulsory license have been satisfied.

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

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

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

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

(i) Form SA1-2—"Short Form" for use by cable systems whose semiannual gross receipts for secondary transmission total less than \$292,000; and

(ii) Form SA3—"Long Form" for use by cable systems whose semiannual gross receipts for secondary transmission total \$292,000 or more.

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

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

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

(i) The full legal name of the owner of the cable system. The 'owner' of the

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

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

(iii) The full mailing address of the owner.

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

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

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

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

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

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

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

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

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

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

(i) A brief description of each subscriber category for which a charge is made by the cable system for the basic

service of providing secondary transmissions of primary broadcast transmitters;

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

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

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

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

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

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

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

If the cable system maintains its revenue accounts on a cash basis, gross receipts for any accounting period includes all such amounts actually re-

ceived by the cable system during that accounting period, excluding amounts paid for secondary transmission service furnished before January 1, 1978; however, amounts received before January 1, 1978, for secondary transmission service furnished after that date, are to be considered as if they had been received during the accounting period in which the service covered by such payments was furnished.

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

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

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

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

(iii) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the

FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

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

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

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

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

(B) On any other basis.

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

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

(viii) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations in effect on October 19, 1976 which permitted carriage of specific network programs on a part-time basis in certain circumstances (former 47 CFR 76.59 (d) (2) and (4), 76.61(e) (2) and (4), and 76.63, referring to § 76.61(e) (2) and (4), all of which were deleted June 25, 1981), carriage of that primary transmitter on that basis need not be reported, and that carriage is to be excluded in computing the distant signal

equivalent of that primary transmitter.

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

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

(ii) The station call sign of each:

(A) AM primary transmitter;

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

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

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

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

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

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

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

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

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

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

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

(12) A statement of the total royalty fee payable for the period covered by the Statement of Account, together with a royalty fee analysis which gives a clear, complete, and detailed presentation of the determination of such fee. This analysis shall present in appropriate sequence all facts, figures, and mathematical processes used in determining such fee, and shall do so in such manner as required in the appropriate form so as to permit the Copyright Office to verify readily, from the face of the Statement of Account, the accuracy of such determination and fee. The royalty fee analysis is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement of Account, for the basic service of providing secondary transmissions of primary broadcast transmissions, total \$75,800 or less.

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

(14) The handwritten signature of:

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

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

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

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

(B) The date of signature;

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

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

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

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

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

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

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

(ii) Where a cable system carries a primary transmitter solely on a substitute or part-time basis, in accordance with paragraph (f)(3) of this section, the system shall compute a DSE for that primary transmitter based on its cumulative carriage on a substitute or part-time basis. If that primary

transmitter is carried on a full-time basis as well as on a substitute or part-time basis, the full DSE for that primary transmitter shall be the full DSE type value for that primary transmitter, for the entire accounting period.

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

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

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

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

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

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

(A) A station is carried on a part-time basis where full-time carriage is

not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

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

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

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

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

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

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

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

(ii) 0.893 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 de-

finied in 17 U.S.C. 111(f) and any fraction thereof.

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

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

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

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

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

partially-distant stations, gross receipts shall be the total gross receipts from subscribers outside the local service area.

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

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

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

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

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

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

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

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

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

(2) In the case of a cable system located wholly outside a top 100 tele-

vision market, the current base rate applied against the per centum .4033.

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

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

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

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

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

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

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

(A) By actual carriage of a particular distant signal prior to June 25, 1981, as

reported in Statements of Account duly filed with the Copyright Office ("actual carriage"), unless the prior carriage was not permitted by the FCC; or

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

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

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

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

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

76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981.

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

(2) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments of royalties for the cable compulsory license occurring within that accounting period. The accrual period shall end on the date appearing on the certified check, cashier's check, money order or electronic payment submitted by a cable system, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of actual receipt by the Copyright Office.

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

(ii) The interest rate applicable to a specific accounting period earlier than the 1992/2 period shall be the rate fixed

by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.17(i) in effect on June 30, 1992.

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

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

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

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

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

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

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (j)(1) of this section.

Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

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

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

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

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

(B) In the case of a request filed under paragraph (j)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United

States, or a statement in accordance with section 1746 of title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations;

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

(iv)(A) All requests filed under this paragraph (j) (except those filed under subparagraph (1)(iii) of this paragraph must be accompanied by a filing fee in the amount of \$15 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

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

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

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

tations 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.

§ 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 co-owners. 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;

(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.

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

(3) Where information is required to be given by paragraph (c)(1) of this section “if known” or as “expected”, such information shall be given in good faith and on the basis of the best knowledge, information, and belief of the person signing the Notice. If so given, later developments affecting the accuracy of such information shall not affect the validity of the Notice.

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

(e) *Filing and service.* (1) If, with respect to the nondramatic musical work named in the Notice of Intention, the registration or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice shall be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in §201.3(e). Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when a proper Notice and fee are both received in the Copyright Office. A written acknowledgement of receipt and filing will be provided to the sender. Upon request and payment of the fee specified in §201.3(e), a Certificate of Filing will be provided to the sender.

(2) If the registration or other public records of the Copyright Office do iden-

tify the copyright owner of the nondramatic musical work named in the Notice of Intention and include an address for such owner, the Notice shall be served on such owner by certified mail or by registered mail sent to the last address for such owner shown by the records of the Office; it shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

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

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

[45 FR 79045, Nov. 28, 1980, as amended at 56 FR 59885, Nov. 26, 1991; 63 FR 30635, June 5, 1998; 64 FR 29521, June 1, 1999]

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

(a) *Definitions.* (1) A *Monthly Statement of Account* is a statement accompanying monthly royalty payments identified in section 115(c)(3) of title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that

section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works.

(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 co-owners. In such cases, the service of a Statement of Account, on one co-owner under paragraph (e)(7) or (f)(7) of this section shall be sufficient with respect to all co-owners.

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

(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 li-

censee may use such phonorecord to reduce a “phonorecord reserve,” as defined in paragraph (a)(6) of this section.

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

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

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

(iii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is equal to or is greater than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall eliminate all eligible phonorecord reserves. Where said

number is greater than the total number of phonorecords comprising all eligible phonorecord reserves, said compulsory licensee shall establish a "negative reserve balance," as defined in paragraph (a)(7) of this section.

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

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

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

(d) *Situations in which a compulsory licensee is barred from maintaining reserves.* Notwithstanding any other provisions of this section, in any case where, within three years before the phonorecord was relinquished from possession, the compulsory licensee has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar action, to have failed to pay such royalties, that compulsory licensee shall be considered to have "Permanently parted with possession" of a phonorecord made under the license at the time at which that licensee actually first parts with possession. For these purposes the "compulsory licensee," as defined in § 201.19(a)(4), shall include:

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

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

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

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

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

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

(iii) The full address, including a specific number and street name or rural route, of the place of business of the compulsory licensee. A post office box

or similar designation will not be sufficient for this purpose, except where it is the only address that can be used in that geographic location;

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

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

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

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

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

(A) The number of phonorecords 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);

(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 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.

(7) *Service.* (i) Each Monthly Statement of Account shall be served on the copyright owner to whom or which it is directed, together with the total royalty for the month covered by the Monthly Statement, by certified mail, or by registered mail on or before the 20th day of the immediately succeeding month. It shall not be necessary to file

a copy of the Monthly Statement in the Copyright Office.

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

(B) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under § 202.19(e)(7)(ii).

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

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

(iii) A separate Monthly Statement of Account shall be served for each month during which there is any activity relevant to the payment of royalties under section 115 of Title 17, United States Code, 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 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 nondra-

matic musical work, include a separate listing of each of the following items of information separately stated and identified for each phonorecord configuration (for example, single disk, long playing disk, cartridge, cassette, or reel-to-reel) made:

(A) The number of phonorecords made through the end of the fiscal year covered by the Annual Statement, including any made during earlier years;

(B) The number of phonorecords which have never been relinquished from possession of the compulsory licensee through the end of the fiscal year covered by the Annual Statement;

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

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

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

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

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

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

(ii) If the information given under paragraphs (A) through (F) of this § 201.19(f)(4)(i) does not reconcile, the Annual Statement shall also include a clear and detailed explanation of the difference. For these purposes, the information given under such paragraphs shall be considered not to reconcile if, after the number of phonorecords given

under paragraphs (B), (C), (D), and (E) are added together and that sum is deducted from the number of phonorecords given under paragraph (A), the result is different from the amount given under paragraph (F).

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

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

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

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

In our opinion the Annual Statement of Account referred to above presents fairly the

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

(City and State of Execution)

(Signature of Certified Public Accountant or CPA Firm)

Certificate Number

Jurisdiction of Certificate

(Date of Opinion)

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

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

(ii) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (f)(3)(viii) of this section is greater than the amount stated in that Annual Statement under paragraph (f)(3)(ix) of this section, the difference between such amounts shall be delivered to the copyright owner together with the service of the Annual Statement. The

delivery of such sum does not require the copyright owner to accept such sum, or to forego any right, relief, or remedy which may be available under law.

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

(B) The Copyright Office will not accept any royalty fees submitted with Annual Statements of Account under § 202.19(f)(7)(iii).

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

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

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

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

[45 FR 79046, Nov. 28, 1980, as amended at 56 FR 7813, Feb. 26, 1991; 56 FR 59885, Nov. 26, 1991; 63 FR 30635, June 5, 1998; 64 FR 29521, June 1, 1999]

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

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

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

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

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

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

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

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

textual matter in order to be considered published in "book form."

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

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

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

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

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

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

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

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

- (1) The title page, if any;
- (2) The page immediately following the title page, if any;
- (3) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;
- (4) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;
- (5) The first page of the main body of the work;
- (6) The last page of the main body of the work;
- (7) Any page between the front page and the first page of the main body of the work, if:
 - (i) There are no more than ten pages between the front page and the first page of the main body of the work; and
 - (ii) The notice is reproduced prominently and is set apart from other matter on the page where it appears;
- (8) Any page between the last page of the main body of the work and back page, if:
 - (i) There are no more than ten pages between the last page of the main body of the work and the back page; and
 - (ii) The notice is reproduced prominently and is set apart from the other matter on the page where it appears.
- (9) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (d) (1) through (8) of this section, a notice is acceptable if it is located:
 - (i) As a part of, or adjacent to, the masthead;
 - (ii) On the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page; or
 - (iii) Adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the

periodical or serial and any combination of the volume and issue number and date of the issue.

(10) In the case of a musical work, in addition to any of the locations listed in paragraphs (d) (1) through (9) of this section, a notice is acceptable if it is located on the first page of music.

(e) *Single-leaf works.* In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

(f) *Contributions to collective works.* For a separate contribution to a collective work to be considered to “bear its own notice of copyright,” as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

(1) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears:

- (i) Under the title of the contribution on that page;
- (ii) Adjacent to the contribution; or
- (iii) On the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

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

- (i) Under a title appearing at or near the beginning of the contribution;
- (ii) On the first page of the main body of the contribution;
- (iii) Immediately following the end of the contribution; or
- (iv) On any of the pages where the contribution appears, if:

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

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

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

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

(4) As an alternative to placing the notice on one of the pages where a sep-

arate contribution itself appears, the contribution is considered to “bear its own notice” if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution:

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

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

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

(1) 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 photo-mechanical or electronic process, in such a position that it ordinarily would

¹Works 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.

appear whenever the work is performed in its entirety, and that is located:

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

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

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

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

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

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

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

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

- (i) To the reproduction itself;
- (ii) To the margin, selvage, or reverse side of the material at frequent and regular intervals; or

(iii) If the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.

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

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

[46 FR 58312, Dec. 1, 1981]

§ 201.21 [Reserved]

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

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

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

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

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

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

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

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

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

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

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

(vi) The identity of the copyright owner, as defined in paragraph (a)(2) of this section. If the copyright owner is

not the person or entity that will be considered the author of the work upon its fixation, the Advance Notice of Potential Infringement also shall include a brief, general statement summarizing the means by which the copyright owner obtained ownership of the copyright and the particular rights that are owned; and

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

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

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

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

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

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

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

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

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

(i) Personal service;

(ii) First-class mail; or

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

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

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

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

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

[46 FR 28849, May 29, 1981, as amended at 63 FR 66042, Dec. 1, 1998]

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

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

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

(1) A facsimile reproduction of the entire copyrightable content of the deposit shall be made a part of the Copyright Office records before transfer to the Library of Congress as provided by section 704(c) of title 17 of the United

States Code, as amended by Pub. L. 94-553, unless, within the discretion of the Register of Copyrights, it is considered impractical or too expensive to make the reproduction;

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

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

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

[45 FR 41414, June 19, 1980]

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

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

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

Notice: Warning of Copyright
Restrictions

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

Under certain conditions specified in law, nonprofit libraries are authorized to lend,

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

This institution reserves the right to refuse to fulfill a loan request if, in its 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]

§ 201.25 Visual Arts Registry.

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

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

(c) *Recordable statements*—(1) *General.* Any statement designated as a "Visual Arts Regulatory Statement" and which pertains to a work of visual art that has been incorporated in or made part of a building may be recorded in the Copyright Office provided the statement is accompanied by the fee for rec-

ordation of documents specified in section 708(a)(4) of title 17 of the United States Code. Upon their submission, the statements and an accompanying documentation or photographs become the property of the United States Government and will not be returned. Photocopies are acceptable if they are clear and legible. Information contained in the Visual Arts Registry Statement should be as complete as possible since the information may affect the enforceability of valuable rights under the copyright law. Visual Arts Registry Statements which are illegible or fall outside of the scope of section 113(d)(3) of title 17 may be refused recordation by the Copyright Office.

(2) *Statements by artists.* Statements by artists regarding a work of visual art incorporated or made part of a building should be filed in a document containing the head: "Registry of Visual Art Incorporated in a Building—Artist's Statement." The statement should contain the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, in-

cluding 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, as amended at 64 FR 29522, June 1, 1999]

§201.26 Recordation of documents pertaining to computer shareware and donation of public domain computer software.

(a) *General.* This section prescribes the procedures for submission of legal documents pertaining to computer shareware and the deposit of public domain computer software under section 805 of Public Law 101-650, 104 Stat. 5089 (1990). Documents recorded in the Copyright Office under this regulation will be included in the Computer Shareware Registry. Recordation in this Registry will establish a public

record of licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware. Documents transferring the ownership of some or all rights under the copyright law of computer shareware and security interests in such software should be recorded under 17 U.S.C. 205, as implemented by § 201.4.

(b) *Definitions*—(1) The term *computer shareware* is accorded its customary meaning within the software industry. In general, shareware is copyrighted software which is distributed for the purposes of testing and review, subject to the condition that payment to the copyright owner is required after a person who has secured a copy decides to use the software.

(2) A *document designated as pertaining to computer shareware* means licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware.

(3) *Public domain computer software* means software which has been publicly distributed with an explicit disclaimer of copyright protection by the copyright owner.

(c) *Forms*. The Copyright Office does not provide forms for the use of persons recording documents designated as pertaining to computer shareware or for the deposit of public domain computer software.

(d) *Recordable Documents*—(1) Any document clearly designated as a "Document Pertaining to Computer Shareware" and which governs the legal relationship between owners of computer shareware and persons associated with the dissemination or other use of computer shareware may be recorded in the Computer Shareware Registry.

(2) Submitted documents may be a duplicate original, a legible photocopy, or other legible facsimile reproduction of the document, and must be complete on its face.

(3) Submitted documents will not be returned, and the Copyright Office requests that if the document is considered valuable, that only copies of that

document be submitted for recordation.

(4) The Copyright Office encourages the submission of a machine-readable copy of the document in the form of an IBM-PC compatible disk, in addition to a copy of the document itself.

(e) *Fee*. The fee for recording a document pertaining to computer shareware is the recordation fee for a document, as prescribed in § 201.3(c).

(f) *Date of recordation*. The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. The submission will be retained and filed by the Copyright Office, and may be destroyed at a later date after preparing suitable copies, in accordance with usual procedures.

(g) *Donation of public domain computer software*. (1) Any person may donate a copy of public domain computer software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Decision as to whether any public domain computer software is suitable for accession to the collections rests solely with the Library of Congress. Materials not selected will be disposed of in accordance with usual procedures, including transfer to other libraries, sale, or destruction. Donation of public domain software may be made regardless of whether a document has been recorded pertaining to the software.

(2) In order to donate public domain software, the following conditions must be met:

(i) The copy of the public domain software must contain an explicit disclaimer of copyright protection from the copyright owner.

(ii) The submission should contain documentation regarding the software. If the documentation is in machine-readable form, a print-out of the documentation should be included in the donation.

(iii) If the public domain software is marketed in a box or other packaging, the entire work as distributed, including the packaging, should be deposited.

(iv) If the public domain software is copy protected, two copies of the software must be submitted.

(3) Donations of public domain software with an accompanying letter of explanation must be sent to the following address: Gift Section, Exchange & Gift Division, Library of Congress, Washington, DC 20540.

[58 FR 29107, May 19, 1993, as amended at 60 FR 34168, June 30, 1995; 64 FR 29522, June 1, 1999]

§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 2½," 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 recording device or medium, or of 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]

§ 201.28 Statements of Account for digital audio recording devices or media.

(a) *General.* This section prescribes rules pertaining to the filing of Statements of Account and royalty fees in the Copyright Office as required by 17 U.S.C. 1003(c) and 1004, in order to import and distribute, or manufacture and distribute, in the United States any digital audio recording device or digital audio recording medium.

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

(1) *Annual statement of account* is the statement required under 17 U.S.C. 1003, to be filed no later than two months after the close of the accounting period covered by the annual statement.

(2) *Device* and *medium* have the same meaning as *digital audio recording device* and *digital audio recording medium*, respectively, have in 17 U.S.C. 1001.

(3) *Digital audio recording product* means digital audio recording devices and digital audio recording media.

(4) *Generally accepted auditing standards (GAAS)*, means the auditing standards promulgated by the American Institute of Certified Public Accountants.

(5) *Manufacturing or importing party* refers to any person or entity that manufactures and distributes, and/or imports and distributes, any digital audio recording device or digital audio recording medium in the United States, and is required under 17 U.S.C. 1003 to file with the Copyright Office quarterly and annual Statements of Account.

(6) *Product category of a device or medium* is a general class of products

made up of functionally equivalent digital audio recording products with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units ("boomboxes"); portable personal recorders; stand-alone home recorders ("tape decks"); home combination systems ("rack systems"); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media, such as 2½ inch, 3 inch, or 5 inch discs.

(7) *Primary auditor* is the certified public accountant retained by the manufacturing or importing party to audit the amounts reported in the annual Statement of Account submitted to the Copyright Office. The primary auditor may be the certified public accountant engaged by the manufacturing or importing party to perform the annual audit of the party's financial statement.

(8) *Quarterly statement of account* is the statement accompanying royalty payments required under 17 U.S.C. 1003, to be filed for each of the first three quarters of the accounting year, and no later than 45 days after the close of the quarterly period covered by the statement.

(9) *Technology of a device or medium* is a digital audio recording product-type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassettes (DCC), or recordable compact discs, including minidisks (MD).

(10) *Distribute, manufacture, transfer price, and serial copying* have the meanings set forth in 17 U.S.C. 1001.

(c) *Accounting periods and filing deadlines*—(1) *Election of filing basis*. Statements of Account may be filed on either a calendar or fiscal year basis at the election of the manufacturing party. The election of a calendar or fiscal year basis must be made when the manufacturing or importing party files its first quarterly Statement of Account by appropriate designation on the Form DART/Q submitted. Thereafter the specific calendar or fiscal-year accounting period must be designated on each quarterly Statement of Account. The filing basis may be

changed at any time upon notification in writing to the Register of Copyrights, accompanied by a statement of reasons as to why the change is to be made and a statement that such change will not affect the aggregate royalties due under the earlier basis. The notification of change in filing basis must be made at least two months before the date the next quarterly Statement of Account is due to be filed.

(2) *Quarterly filings*. Quarterly Statements of Account shall be filed on Form DART/Q and shall cover a three-month period corresponding to the calendar or fiscal year of the filing party. A quarterly statement shall be filed no later than 45 days after the close of the period it covers.

(3) *Annual filings*. Annual Statements of Account shall be filed on Form DART/A and shall cover both the fourth quarter of an accounting year and the aggregate of the entire year corresponding to the calendar or fiscal accounting year elected. An annual statement shall be filed no later than two months after the close of the period it covers. As a transitional measure, however, the first annual Statement of Account filed after October 28, 1992, is not due until March 1, 1994, or two months after the end of the calendar or fiscal year in which the manufacturing or importing party first filed a quarterly Statement of Account, whichever is later. The first annual Statement of Account shall cover the entire period from October 28, 1992, to the end of the full accounting year. The appropriate royalty payment, calculated according to the instructions contained in Form DART/A, shall accompany the annual Statement of Account covering royalties due for the filing year: that is, royalties for the fourth quarter and any additional royalties that are due because of adjustments in the aggregate amounts of devices or media distributed.

(4) *Early or late filings*. Statements of Account and royalty fees received before the end of the particular accounting period covered by the statement will not be processed by the Office. The statement must be filed after the close of the relevant accounting period. Statements of Account and royalty

fees received after the 45-day deadline for quarterly statements or the two month deadline for annual statements will be accepted for whatever legal effect they may have and will be assessed the appropriate interest charge for the late filing.

(d) *Forms.* (1) Each quarterly or annual Statement of Account shall be submitted on the appropriate form prescribed by the Copyright Office. Computation of the royalty fee shall be in accordance with the procedures set forth in the forms and this section. Statement of Account forms are available from the Licensing Division, Library of Congress. Forms and other information may be requested from the Licensing Division by facsimile transmission (FAX), but copies of Statement of Account forms transmitted to the Office by FAX will not be accepted.

(2) Forms prescribed by the Copyright Office are designated Quarterly Statement of Account for Digital Audio Recording Products (Form DART/Q) and Annual Statement of Account for Digital Audio Recording Products (Form DART/A).

(e) *Contents of quarterly Statements of Account.* (1) *Quarterly period and filing.* Any quarterly Statement of Account shall cover the full quarter of the calendar or fiscal accounting year for the particular quarter for which it is filed. A separate quarterly statement shall be filed for each quarter of the first three quarters of the accounting year during which there is any activity relevant to the payment of royalties under 17 U.S.C. 1004. The annual Statement of Account identified in paragraph (f) of this section incorporates the fourth quarter of the accounting year.

(2) *General content.* Each quarterly Statement of Account shall be filed on Form DART/Q, the "Quarterly Statement of Account for Digital Audio Recording Products," and shall include a clear statement of the following information:

(i) A designation of the calendar or fiscal year of the annual reporting period;

(ii) A designation of the period, including the beginning and ending day, month, and year of the period covered by the quarter;

(iii) The full legal name of the manufacturing and/or importing party, together with any "doing-business-as" names used by such person or entity for the purpose of conducting the business of manufacturing, importing, or distributing digital audio recording products;

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

(v) A designation of the manufacturing or importing party status, i.e., "Manufacturer," "Importer," or "Manufacturer and Importer;"

(vi) The designation "Product Categories" together with the product categories of the digital audio recording products manufactured or imported and distributed during the quarter covered by the statement;

(vii) The designation "Technologies" together with the technologies of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(viii) The designation "Series or Model Number" followed by the model or series numbers of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(ix) The "fee code" associated with the product;

(x) The "source code" for the product category;

(xi) The "transfer price" of the product;

(xii) The "number of units distributed" for each product;

(xiii) The "minimum fee per unit" for each product;

(xiv) The statutory royalty "rate" for digital audio recording devices or media;

(xv) The "rate fee" for each product;

(xvi) The appropriate "maximum fee per unit" for each product;

(xvii) The "maximum fee" for each product; and

(xviii) A computation of the total royalty payable for the quarter covered by the statement. Filing parties may not round off the figures they list in Space C, the computation section of the form, except for the figure representing the total royalty fee due; in that case, numbers ending in 50 to 99 cents may be rounded up to the next dollar, and numbers ending in one to 49 cents may be rounded down to the next dollar;

(3) *Royalty payments and accounting.*

(i) The royalty specified in 17 U.S.C. 1004 shall accompany the quarterly and annual Statements of Account. No royalty is payable for redistribution of the same product item unless a credit has been taken for such items. Where royalties are payable for the period covered by the statement, the Statement of Account shall contain the following information for each unique combination of product category, technology, series or model number, fee code, source code, and transfer price:

(A) The total number of digital audio recording media distributed, multiplied by the statutory royalty rate of three percent (3%) of the transfer price;

(B) The total number of digital audio recording devices distributed for which the statutory royalty rate of two percent (2%) of the transfer price is payable, multiplied by such percentage rate of the transfer price;

(C) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to eight dollars (\$8.00), multiplied by such eight dollar amount;

(D) The total number of digital audio recording devices distributed for which the statutory maximum royalty is limited to twelve dollars (\$12.00), multiplied by such twelve dollar amount; and

(E) The total number of digital audio recording devices distributed for which the statutory minimum royalty is limited to one dollar (\$1.00), multiplied by such one dollar amount.

(ii) The amount of the royalty payment shall be calculated in accordance with the instructions specified in the quarterly Statement of Account form. Payment of the royalty fee must be in the form of a certified check, cashier's check, money order, or electronic pay-

ment 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, principal, or agent of the "manufacturing or importing party" identified in Space B.

Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et. seq.*

(f) *Contents of annual Statements of Account*—(1) *General contents.* Each annual Statement of Account shall be filed on form DART/A, "Annual Statement of Account for Digital Audio Recording Products." It must be filed by any importer or manufacturer that distributed in the United States, during a given calendar or fiscal year, any digital audio recording device or digital audio recording medium. The annual statement shall cover the aggregate of the distribution of devices and media for the entire year corresponding to the calendar or fiscal year elected. The annual Statement of Account shall contain the information, oath, and certification prescribed in paragraphs (e)(2)(i) through (e)(7)(iii) of this section, and shall cover the entire accounting year, including the fourth quarter distribution, and shall also provide for the reconciliation of the aggregated accounting of digital audio recording devices and media for the reported accounting year.

(2) *Reconciliation.* Any royalty payment due under sections 1003 and 1004 of title 17 that was not previously paid with the filing party's first three quarterly Statements of Account, shall be reconciled in the annual statement. Reconciliation in the annual Statement of Account provides for adjustments for reductions, refunds, underpayments, overpayments, credits, and royalty payments paid in Quarters 1, 2, and 3, and shall be computed in accordance with the instructions included in the annual Statement of Account. Errors that require reconciliation shall be corrected immediately upon discovery.

(3) *Accountant's opinion.* Each annual Statement of Account or any amended annual Statement of Account shall be

audited by the primary auditor as defined in paragraph (b)(7) of this section. An amendment may be submitted to the Office either as a result of responses to questions raised by a Licensing Division examiner or on the initiative of the manufacturing or importing party to correct an error in the original Statement of Account.

(i) The audit shall be performed in accordance with generally accepted auditing standards (GAAS). The audit may be performed in conjunction with an annual audit of the manufacturing or importing party's financial statements.

(ii) The CPA shall issue a report, the "primary auditor's report," reflecting his or her opinion as to whether the annual statement presents fairly, in all material respects, the number of digital audio recording devices and media that were imported and distributed, or manufactured and distributed, by the manufacturing or importing party during the relevant year, and the amount of royalty payments applicable to them under 17 U.S.C. chapter 10, in accordance with that law and these regulations.

(iii) The primary auditor's report shall be filed with the Copyright Office together with the annual Statement of Account, within two months after the end of the annual period for which the annual Statement of Account is prepared. The report may be qualified to the extent necessary and appropriate.

(iv) The Copyright Office does not provide a specific form, or require a specific format, for the CPA's review; however, in addition to the above, certain items must be named as audited items. These include the variables necessary to complete Space C of the Statement of Account form. The CPA may place his or her opinion, which will serve as the "primary auditor's report," in the space provided on Form DART/A, or may attach a separate sheet or sheets containing the opinion.

(v) The auditor's report shall be signed by an individual, or in the name of a partnership or a corporation, and shall include city and state of execution, certificate number, jurisdiction of certificate, and date of opinion. The certificate number and jurisdiction are not required if the report is signed in

the name of a partnership or a corporation.

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

(h) *Corrections, supplemental payments, and refunds—(1) General.* Upon compliance with the procedures and within the time limits set forth in this paragraph (h), corrections to quarterly and annual Statements of Account will be placed on record, and supplemental royalty fee payments will be received for deposit, or refunds without interest will be issued, in the following cases:

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

(ii) Where, for any reason except that mentioned in paragraph (h)(2) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to quarterly or annual Statements of Account will not be placed on file, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, cases where digital audio recording media were exported) took place later.

(3) Requests that corrections to annual or quarterly Statements of Account be accepted, that fee payments be accepted, or that refunds be issued shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request shall be made in writing and must clearly identify the manufacturing or importing party making the request, the accounting period in question, and the purpose of the request. A request for a refund must be

received in the Copyright Office before the expiration of two months from the last day of the applicable Statement of Account filing period. A request made by telephone or by telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, is received in the Copyright Office within the two-month period, and a written request meeting all the conditions of this paragraph (h)(3) is also received in the Copyright Office within 14 days after the end of such two-month period.

(ii) The request must clearly identify the incorrect or incomplete information formerly filed and must provide the correct or additional information.

(iii) In the case where a royalty fee was miscalculated and the amount deposited with the Copyright Office was too large or too small, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with 28 U.S.C. 1746, made and signed in accordance with paragraph (e)(7) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

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

(v)(A) The request must be accompanied by a filing fee in the amount of \$20 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or a certified check, cashier's check, or money order, payable to the Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) Requests that a supplemental royalty fee payment be deposited must be accompanied by a remittance in the

full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(vi) All requests submitted under paragraph (h) of this section must be signed by the manufacturing or importing party named in the Statement of Account, or the duly authorized agent of that party in accordance with paragraph (e)(7) of this section.

(vii) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the manufacturing or importing party named in the Statement of Account. The Copyright Office will not pay interest on any royalty refunds.

(i) *Examination of Statements of Account by the Copyright Office.* (1) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division will examine the statement for obvious errors or omissions appearing on the face of the documents and will require that any such obvious errors or omissions be corrected before final processing of the document is completed. If, as the result of communications between the Copyright Office and the manufacturer or importer, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record.

(2) Completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall not be considered a determination that the Statement of Account

was, in fact, properly prepared and accurate, that the correct amount of the royalty was deposited, that the statutory time limits for filing had been met, or that any other requirements of 17 U.S.C. 1001 *et. seq.* were fulfilled.

(j) *Interest on late payments or underpayments.* (1) Royalty payments submitted as a result of late payments or underpayments shall include interest, which shall begin to accrue on the first day after the close of the period for filing Statements of Account for all late payments or underpayments of royalties occurring within that accounting period. The accrual period for interest shall end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by the manufacturing or importing party, if the payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period shall end on the date of actual receipt by the Copyright Office.

(2) The interest rate applicable to a specific accounting period shall be the Current Value of Funds rate in accordance with the Treasury Financial Manual, at 1 TFM 6-8025.40, in effect on the first business day after the close of the filing deadline for the relevant accounting period. The interest rate for a particular accounting period may be obtained by consulting the FEDERAL REGISTER for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

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

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

[59 FR 4589, Feb. 1, 1994]

§ 201.29 Access to, and confidentiality of, Statements of Account, Verification Auditor's Reports, and other verification information filed in the Copyright Office for digital audio recording devices or media.

(a) *General.* This section prescribes rules covering access to DART Statements of Account, including the Primary Auditor's Reports, filed under 17 U.S.C. 1003(c) and access to a Verifying Auditor's Report or other information that may be filed in the Office in a DART verification procedure as set out in § 201.30. It also prescribes rules to ensure confidential disclosure of these materials to appropriate parties.

(b) *Definitions.*

(1) *Access* includes inspection of and supervised making of notes on information contained in Statements of Account including Primary Auditor's Reports, Verification Auditor's Reports, and any other verification information.

(2) *Audit and Verification Information* means the reports of the Primary Auditor and Verifying Auditor filed with the Copyright Office under §§ 201.28 and 201.30, and all information relating to a manufacturing or importing party.

(3) *DART Access Form* means the form provided by the Copyright Office that must be completed and signed by any appropriate party seeking access to DART confidential material.

(4) *DART confidential material* means the Quarterly and Annual Statements of Account, including the Primary Auditor's Report that is part of the Annual Statements of Account, and the Verifying Auditor's Report and any other verification information filed with the Copyright Office. It also includes photocopies of notes made by requestors who have had access to these materials that are retained by the Copyright Office.

(5) *Interested copyright party* means a party as defined in 17 U.S.C. 1001(7).

(6) *A Representative* is someone, such as a lawyer or accountant, who is not an employee or officer of an interested copyright party or a manufacturing or importing party but is authorized to act on that party's behalf.

(7) *Statements of Account* means Quarterly and Annual Statements of Account as required under 17 U.S.C. 1003(c) and defined in § 201.28.

(c) *Confidentiality.* The Copyright Office will keep all DART confidential materials in locked files and disclose them only in accordance with this section. Any person or entity provided with access to DART confidential material by the Copyright Office shall receive such information in confidence and shall use and disclose it only as authorized in 17 U.S.C. 1001 *et. seq.*

(d) *Persons allowed access to DART confidential material.* Access to DART Statements of Account filed under 17 U.S.C. 1003(c) and to Verification Auditor's Reports or other verification information is limited to:

(1) An interested copyright party as defined in § 201.29(b)(5) or an authorized representative of an interested copyright party, who has been qualified for access pursuant to paragraph (f)(2) of this section;

(2) The Verifying Auditor authorized to conduct verification procedures under § 201.30;

(3) The manufacturing or importing party who filed that Statement of Account or that party's authorized representative(s); and

(4) Staff of the Copyright Office or the Library of Congress who require access in the performance of their duties under title 17 U.S.C. 1001 *et seq.*

(e) *Requests for access.* An interested copyright party, manufacturing party, importing party, representative, or Verifying Auditor seeking access to any DART confidential material must complete and sign a "DART Access Form." The requestor must submit a copy of the completed DART Access Form to the Licensing Specialist, Licensing Division. The form must be received in the Licensing Division at least 5 working days before the date an appointment is requested. The form may be faxed to the Licensing Division to expedite scheduling, but a copy of the form with the original signature must be filed with the Office.

(1) A representative of an interested copyright party, a manufacturing party or an importing party shall submit an affidavit of his or her authority (e.g., in the form of a letter of authorization from the interested copyright party or the manufacturing or importing party).

(2) An auditor selected to conduct a verification procedure under § 201.30 shall submit an affidavit of his or her selection to conduct the verification procedure.

(3) DART Access Forms may be requested from, and upon completion returned to: Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557-6400. They may also be requested or submitted in person at the Licensing Division, Room LM-458, James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC, between 8:30 a.m. and 5 p.m.

(f) *Criteria for access to DART confidential material.* (1) A Verifying Auditor will be allowed access to any particular Statement of Account and Primary Auditor's Report required to perform his or her verification function;

(2) Interested copyright parties as defined in paragraph (b)(5) of this section will be allowed access to any DART confidential material as defined in paragraph (b)(4) of this section for verification purposes, except that no interested copyright party owned or controlled by a manufacturing or importing party subject to royalty payment obligations under the Audio Home Recording Act, or who owns or controls such a manufacturing or importing party, may have access to DART confidential material relating to any other manufacturing or importing party. In such cases, a representative of the interested copyright party as defined in paragraph (b)(6) of this section may have access for that party, provided that these representatives do not disclose the confidential information contained in the Statement of Account or Primary Auditor's Report to his or her client.

(3) Access to a Verifying Auditor's Report and any other verification material filed in the Office shall be limited to the interested copyright party(s) requesting the verification procedure and to the manufacturing or importing party whose Statement of Account was the subject of the verification procedure.

(g) *Denial of access.* Any party who does not meet the criteria described in § 201.29(f) shall be denied access.

(h) *Content of DART Access Form.* The DART Access Form shall include the following information:

(1) Identification of the Statement of Account and Primary Auditor's Report, the Verification Auditor's Report and other verification materials, or notes prepared by requestors who earlier accessed the same items, to be accessed, by both the name (of the manufacturing party or importing party) and the quarter(s) and year(s) to be accessed.

(2) The name of the interested copyright party, manufacturing party, importing party, or verification auditor on whose behalf the request is made, plus this party's complete address, including a street address (not a post office box number), a telephone number, and a telefax number, if any.

(3) If the request for access is by or for an interested copyright party, a statement indicating whether the copyright party is owned or controlled by a manufacturing or importing party subject to a royalty payment obligation, or whether the interested copyright party owns or controls a manufacturing or importing party subject to royalty payments.

(4) The name, address, and telephone number of the person making the request for access and his/her relationship to the party on whose behalf the request is made.

(5) The specific purpose for the request for access, for example, access is requested in order to verify a Statement of Account; in order to review the results of a verification audit; for the resolution of a dispute arising from such an audit; or in order for a manufacturing or importing party to review its own Statement of Account, Primary Auditor's Report, Verification Auditor's Report, or related information.

(6) A statement that the information obtained from access to Statements of Account, Primary Auditor's Report, Verification Auditor's Report, and any other verification audit filings will be used only for a purpose permitted under the Audio Home Recording Act (AHRA) and the DART regulations.

(7) The actual signature of the party or the representative of the party requesting access certifying that the information will be held in confidence and used only for the purpose specified by the Audio Home Recording Act and these regulations.

[60 FR 25998, May 16, 1995, as amended at 63 FR 30635, June 5, 1998]

§ 201.30 Verification of Statements of Account.

(a) *General.* This section prescribes rules pertaining to the verification of information contained in the Statements of Account by interested copyright parties pursuant to section 1003(c) of title 17 of the United States Code.

(b) *Definitions*—(1) *Annual Statement of Account*, *generally accepted auditing standards (GAAS)*, and *primary auditor* have the same meaning as the definition in § 201.28 of this part.

(2) *Filer* is a manufacturer or importer of digital devices or media who is required by 17 U.S.C. 1003 to file with the Copyright Office Quarterly and Annual Statements of Account and a primary auditor's report on the Annual Statement of Account.

(3) *Interested copyright party* has the same meaning as the definition in § 201.29 of this part.

(4) *Verifying auditor* is the person retained by interested copyright parties to perform a verification procedure. He or she is independent and qualified as defined in paragraphs (j)(2) and (j)(3) of this section.

(5) *Verification procedure* is the process followed by the verifying auditor to verify the information reported on an Annual Statement of Account.

(c) *Purpose of verification.* The purpose of verification is to determine whether there was any failure of the primary auditor to conduct the primary audit properly or to obtain a reliable result, or whether there was any error in the Annual Statement of Account.

(d) *Timing of verification procedure*—(1) *Requesting a verification procedure.* No sooner than three months nor later than three years after the filing deadline of the Annual Statement of Account to be verified, any interested copyright party shall notify the Register of Copyrights of its interest in in-

stituting a verification procedure. Such notification of interest shall also be served at the same time on the filer and the primary auditor identified in the Annual Statement of Account. Such notification shall include the year of the Annual Statement of Account to be verified, the name of the filer, information on how other interested copyright parties may contact the party interested in the verification including name, address, telephone number, facsimile number and electronic mail address, if any, and a statement establishing the party filing the notification as an interested copyright party. The notification of interest may apply to more than one Annual Statement of Account and more than one filer.

(2) *Coordination and selection of verifying auditor.* The Copyright Office will publish in the FEDERAL REGISTER notice of having received a notification of interest to institute a verification procedure. Interested copyright parties have one month from the date of publication of the FEDERAL REGISTER notice to notify the party interested in instituting the verification procedure of their intent to join with it and to participate in the selection of the verifying auditor. Any dispute about the selection of the verifying auditor shall be resolved by the parties themselves.

(3) *Notification of the filer and primary auditor.* As soon as the verifying auditor has been selected, and in no case later than two months after the publication in the FEDERAL REGISTER of the notice described in paragraph (d)(2) of this section, the joint interested copyright parties shall notify the Register of Copyrights, the filer, and the primary auditor identified in the Annual Statement of Account to be verified, that they intend or do not intend to initiate a verification procedure.

(4) *Commencement of the verification procedure.* The verification procedure shall begin no sooner than one month after notice of intent to initiate a verification procedure was given to the filer and the primary auditor by the joint interested copyright parties. The joint interested copyright parties shall grant the filer or the primary auditor a postponement of the beginning of the

verification procedure of up to one additional month if either one requests it. Verification procedures shall be conducted at reasonable times during normal business hours.

(5) *Anti-duplication rules.* A filer shall be subject to no more than one verification procedure per calendar year. An Annual Statement of Account shall be subject to a verification procedure only once.

(e) *Scope of verification.* The verifying auditor shall limit his or her examination to verifying the information required in the Annual Statement of Account. To the extent possible, the verifying auditor shall inspect the information contained in the primary auditor's report and the primary auditor's working papers. If the verifying auditor believes that access to the records, files, or other materials in the control of the filer is required according to GAAS, he or she may, after consultation with the primary auditor, require the production of these documents as well. The verifying auditor and the primary auditor shall act in good faith using reasonable professional judgment, with the intention of reaching a reasonable accommodation as to the necessity and scope of examination of any additional documents, but the decision to require the production of additional documents is solely that of the verifying auditor.

(f) *Verification report.* Upon concluding the verification procedure, the verifying auditor shall render a report enumerating in reasonable detail the procedures performed by the verifying auditor and his or her findings. Such findings shall state whether there was any failure of the primary auditor to conduct properly the primary audit or obtain a reliable result, and whether there was any error in the Annual Statement of Account, itemized by amount and by the filer's elected fiscal year. If there was such failure or error, the report shall specify all evidence from which the verifying auditor reached such conclusions. Such evidence shall be listed and identified in an appendix to the report in sufficient detail to enable a third party to reasonably understand or interpret the evidence on which the verifying auditor based his or her conclusion. If there

was no such failure or error, the report shall so state.

(g) *Distribution of report.* Copies of the verifying auditor's report shall be subject to the confidentiality provisions of § 201.29 and shall be distributed as follows:

(1) One copy, excluding the appendix, if applicable, shall be filed with the Register of Copyrights.

(2) One copy, with the appendix, if applicable, shall be submitted to each of the interested copyright parties who retained the services of the verifying auditor and who are authorized to receive such information according to § 201.29.

(3) One copy, with the appendix, if applicable, shall be submitted to the filer of the Annual Statement of Account.

(4) One copy, with the appendix, if applicable, shall be submitted to the primary auditor.

(h) *Retention of report.* The Register of Copyrights will retain his or her copy of the verifying auditor's report for three years following the date the copy of the verifying auditor's report is filed.

(i) *Costs of verification.* The joint interested copyright parties who requested the verification procedure shall pay the fees of the verifying auditor and the primary auditor for their work performed in connection with the verification procedure, except, if the verification procedure results in a judicial determination or the filer's agreement that royalty payments were understated on the Annual Statement of Account, then,

(1) if the amount is less than five percent (5%) of the amount stated on the Annual Statement of Account, that amount shall first be used to pay the fees of the verifying auditor and the primary auditor, and any remaining amount plus any applicable interest on the total amount shall be deposited, allocated by the filer's elected fiscal year, with the Register of Copyrights, or

(2) if the amount is equal to or greater than five percent (5%) of the amount stated on the Annual Statement of Account, the filer shall pay the fees of the verifying auditor and the primary auditor, and, in addition, shall deposit the

amount found to be due plus any applicable interest on the total amount, allocated by the filer's elected fiscal year, with the Register of Copyrights.

(j) *Independence and qualifications of verifying auditor.* (1) The verifying auditor shall be qualified and independent as defined in this section. If the filer has reason to believe that the verifying auditor is not qualified or independent, it shall raise the matter with the joint interested copyright parties before the commencement of the verification procedure, and if the matter is not resolved, it may raise the issue with the American Institute of Certified Public Accountants' Professional Ethics Division and/or the verifying auditor's State Board of Accountancy while the verification procedure is being performed.

(2) A verifying auditor shall be considered qualified if he or she is a certified public accountant or works under the supervision of a certified public accounting firm.

(3) A verifying auditor shall be considered independent if:

(i) He or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules and Interpretations of such Code applicable generally to attest engagements (collectively, the "AICPA Code"); and

(ii) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

[61 FR 30813, June 18, 1996]

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

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required by the North American Free Trade Agreement Implementation Act

of December 8, 1993, Public Law No. 103-182. On or after January 3, 1995, the Copyright Office will publish in the FEDERAL REGISTER a list of works for which potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

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

(1) *Effective filing.* To be effective a Statement of Intent must be complete and timely.

(2) *Eligible work* means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) *Fixed* means a work 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101

(4) *Potential copyright owner* means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) *Published* means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering

to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

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

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

(2) Statements of Intent must include:

(i) The title(s) of the work(s) for which copyright restoration is sought, including any underlying work(s) that has a title(s) different from the title of the motion picture, provided all works are owned by the same potential copyright owner;

(ii) The nation of first fixation;

(iii) The nation of first publication;

(iv) The date of first publication;

(v) The name and mailing address (and telephone and telefax, if applicable) of the potential copyright owner of the work;

(vi) The following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

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

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

Signature: _____

Name (Printed or Typed): _____

Date: _____

(3) If copyright restoration is sought for an underlying work only, the Statement of Intent must specify the kind of underlying

work covered and give the title if different from the title of the motion picture.

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

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

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

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

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

(f) *Effective date of restoration of copyright protection.* (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.

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

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

[59 FR 12164, Mar. 16, 1994, as amended at 59 FR 58789, Nov. 15, 1994; 60 FR 50420, Sept. 29, 1995]

§ 201.32 [Reserved]

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

(a) *General.* This section prescribes the procedures for submission of Notices of Intent to Enforce a Restored Copyright under the Uruguay Round Agreements Act, as required in 17

U.S.C. 104A(a). On or before May 1, 1996, and every four months thereafter, the Copyright Office will publish in the FEDERAL REGISTER a list of works for which Notices of Intent to Enforce have been filed. It will maintain a list of these works. The Office will also make a more complete version of the information contained in the Notice of Intent to Enforce available on its automated database, which can be accessed over the Internet.

(b) *Definitions*—(1) *NAFTA work* means a work restored to copyright on January 1, 1995, as a result of compliance with procedures contained in the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law No. 103-182.

(2) *Reliance party* means any person who—

(i) With respect to a particular work, engages in acts, before the source country of that work becomes an eligible country under the URAA, which would have violated 17 U.S.C. 106 if the restored work had been subject to copyright protection and who, after the source country becomes an eligible country, continues to engage in such acts;

(ii) Before the source country of a particular work becomes an eligible country, makes or acquires one or more copies or phonorecords of that work; or

(iii) As the result of the sale or other disposition of a derivative work, covered under the new 17 U.S.C. 104A(d)(3), or of significant assets of a person, described in the new 17 U.S.C. 104 A(d)(3) (A) or (B), is a successor, assignee or licensee of that person.

(3) *Restored work* means an original work of authorship that—

(i) Is protected under 17 U.S.C. 104A(a);

(ii) Is not in the public domain in its source country through expiration of term of protection;

(iii) Is in the public domain in the United States due to—

(A) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(B) Lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(C) Lack of national eligibility; and

(iv) Has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

(4) *Source country* of a restored work is—

(i) A nation other than the United States; and

(ii) In the case of an unpublished work—

(A) The eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than one author or rightholder, the majority of foreign authors or rightholders are nationals or domiciliaries of eligible countries; or

(B) If the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(iii) In the case of a published work—

(A) The eligible country in which the work is first published; or

(B) If the restored work is published on the same day in two or more eligible countries, the eligible country which has the most significant contacts with the work.

(c) *Forms*. The Copyright Office does not provide forms for Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such notices follow the format set out in Appendix A of this section and give all of the information listed in paragraph (d) of this section. Notices of Intent to Enforce must be in English, and should be typed or printed by hand legibly in dark, preferably black, ink, on 8½ by 11 inch white paper of good quality, with at least a one inch (or three cm) margin.

(d) *Requirements for Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act*. (1) Notices of Intent to Enforce should be sent to the following address: GC/I&R,

P.O. Box 70400, Southwest Station,
Washington, DC 20024, USA.

(2) The document should be clearly designated as "Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act".

(3) Notices of Intent to Enforce must include:

(i) Required information:

(A) The title of the work, or if untitled, a brief description of the work;

(B) An English translation of the title if title is in a foreign language;

(C) Alternative titles if any;

(D) Name of the copyright owner of the restored work, or of an owner of an exclusive right therein;

(E) The address and telephone number where the owner of copyright or the exclusive right therein can be reached; and

(F) The following certification signed and dated by the owner of copyright, or the owner of an exclusive right therein, or the owner's authorized agent:

I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Signature _____

Name (printed or typed) _____

As agent for (if applicable) _____

Date: _____

(ii) Optional but essential information:

(A) Type of work (painting, sculpture, music, motion picture, sound recording, book, etc.);

(B) Name of author(s);

(C) Source country;

(D) Approximate year of publication;

(E) Additional identifying information (e.g. for movies: director, leading actors, screenwriter, animator; for photographs or books: subject matter; for books: editor, publisher, contributors);

(F) Rights owned by the party on whose behalf the Notice of Intent to Enforce is filed (e.g., the right to reproduce/distribute/publicly display/publicly perform the work, or to prepare a derivative work based on the work, etc.); and

(G) Telefax number at which owner, exclusive rights holder, or agent thereof can be reached.

(4) Notices of Intent to Enforce may cover multiple works provided that each work is identified by title, all the works are by the same author, all the works are owned by the identified copyright owner or owner of an exclusive right, and the rights owned by the party on whose behalf the Notice of Intent is filed are the same. In the case of Notices of Intent to Enforce covering multiple works, the notice must separately designate for each work covered the title of the work, or if untitled, a brief description of the work; an English translation of the title if the title is in a foreign language; alternative titles, if any; the type of work; the source country; the approximate year of publication; and additional identifying information.

(5) Notices of Intent to Enforce works restored on January 1, 1996, may be submitted to the Copyright Office on or after January 1, 1996, through December 31, 1997.

(e) *Fee*—(1) *Amount*. The filing fee for recording Notices of Intent to Enforce is 30 U.S. dollars for notices covering one work. For notices covering multiple works as described in paragraph (d)(4) of this section, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work. For example, the fee for a Notice of Intent to Enforce covering three works would be 32 U.S. dollars. This fee includes the cost of an acknowledgment of recordation.

(2) *Method of Payment*—(i) *Checks, money orders, or bank drafts*. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. International money orders, and postal money orders that are negotiable only at a post office are not acceptable. CURRENCY WILL NOT BE ACCEPTED.

(ii) *Copyright Office Deposit Account.* The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Copyright Office, Library of Congress, Washington, DC 20559-6000, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

(iii) *Credit cards.* For URAA filings the Copyright Office will accept VISA, MasterCard and American Express. Debit cards cannot be accepted for payment. With the NIE, a filer using a credit card must submit a separate cover letter stating the name of the credit card, the credit card number, the expiration date of the credit card, the total amount, and a signature authorizing the Office to charge the fees to the account. To protect the security of the credit card number, the filer must not write the credit card number on the Notice of Intent to Enforce.

(f) *Public online access.* (1) Almost all of the information contained in the Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system LC MARVEL through the Internet. Except on Federal holidays, this information may be obtained on terminals in the Copyright Office at the Library of Congress Monday through Friday 8:30 a.m. - 5:00 p.m. U.S. Eastern Time or over the Internet Monday - Friday 6:30 a.m. - 9:30 p.m. U.S. Eastern Time, Saturday 8:00 a.m. - 5 p.m., and Sunday 1:00 p.m. - 5:00 p.m.

(2) Alternative ways to connect through Internet are: (i) use the Copyright Office Home Page on the World Wide Web at: <http://lcweb.loc.gov/copyright>, (ii) telnet to locis.loc.gov or the numeric address 140.147.254.3, or (iii) telnet to marvel.loc.gov, or the numeric address 140.147.248.7 and log in as

marvel, or (iv) use a Gopher Client to connect to marvel.loc.gov.

(3) Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of an exclusive right; the author; the type of work; the date of receipt of the NIE in the Copyright Office; the date of publication in the FEDERAL REGISTER; the rights covered by the notice; and the address, telephone and telefax number (if given) of the copyright owner.

(4) Online records of Notices of Intent to Enforce are searchable by the title, the copyright owner or owner of an exclusive right, and the author.

(g) *NAFTA work.* The copyright owner of a work restored under NAFTA by the filing of a NAFTA Statement of Intent to Restore with the Copyright Office prior to January 1, 1995, is not required to file a Notice of Intent to Enforce under this regulation.

APPENDIX A TO § 201.33—NOTICE OF INTENT TO ENFORCE A COPYRIGHT RESTORED UNDER THE URUGUAY ROUND AGREEMENTS ACT (URAA)

1. Title: _____
(If this work does not have a title, state "No title.") OR
Brief description of work (for untitled works only): _____
2. English translation of title (if applicable): _____
3. Alternative title(s) (if any): _____
4. Type of work: _____
(e.g. painting, sculpture, music, motion picture, sound recording, book)
5. Name of author(s): _____
6. Source country: _____
7. Approximate year of publication: _____
8. Additional identifying information: _____
(e.g. for movies; director, leading actors, screenwriter, animator, for photographs: subject matter; for books; editor, publisher, contributors, subject matter).
9. Name of copyright owner: _____
(Statements may be filed in the name of the owner of the restored copyright or the owner of an exclusive right therein.)
10. If you are not the owner of all rights, specify the rights you own: _____
(e.g. the right to reproduce/distribute publicly display/publicly perform the work, or to prepare a derivative work based on the work)

11. Address at which copyright owner may be contacted:

(Give the complete address, including the country and an "attention" line, or "in care of" name, if necessary.)

12. Telephone number of owner: _____
 13. Telefax number of owner: _____
 14. Certification and Signature:

I hereby certify that, for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Signature: _____
 Name (printed or typed): _____
 As agent for (if applicable): _____
 Date: _____

NOTE: Notices of Intent to Enforce must be in English, except for the original title, and either typed or printed by hand legibly in dark, preferably black, ink. They should be on 8½" by 11" white paper of good quality, with at least a 1-inch (or 3 cm) margin.

[60 FR 50420, Sept. 29, 1995, as amended at 63 FR 30635, June 5, 1998; 64 FR 12902, Mar. 16, 1999]

§ 201.34 Procedures for filing Correction Notices of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.

(a) *General.* This section prescribes the procedures for submission of corrections of Notices of Intent to Enforce a Copyright (NIEs) Restored under the Uruguay Round Agreements Act of December 8, 1994, as required by 17 U.S.C. 104A(e), as amended by Pub. L. 103-465, 108 Stat. 4809, 4976 (1994).

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

(1) *Major error.* A major error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is an error in the name of the copyright owner or rightholder, or in the title of the work (as opposed to its translation, if any) where such error fails to adequately identify the restored work or its owner through a reasonable search of the Copyright Office NIE records. Omission of, or incorrect information regarding, a written agency relationship also constitutes a major error.

(2) *Minor error.* A minor error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is any error that is not a major error.

(3) *Restored work.* For the definition of works restored under the URAA, see 37 CFR 201.33.

(c) *Forms.* The Copyright Office does not provide forms for Correction Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such Correction NIEs follow the format set out in Appendix A of this section and give all information listed in paragraph (d) of this section. Correction NIEs must be in English, and should be typed or legibly printed by hand in dark, preferably black ink, on 8½" by 11" white paper of good quality with at least a 1" (or three cm) margin.

(d) *Requirements for Correction Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.* (1) A correction for a Notice of Intent to Enforce should be clearly designated as a "Correction Notice of Intent to Enforce" or "Correction NIE."

(2) Correction Notices of Intent to Enforce should be sent to the following address: URAA/GATT, NIEs and Registrations, PO Box 70400, Southwest Station, Washington, DC 20024, USA.

(3) A Correction NIE shall contain the following information:

(i) The volume and document number of the previous NIE which is to be corrected;

(ii) The title of the work as it appears on the previous NIE, including alternative titles, if they appear;

(iii) The English translation of the title, if any, as it appears on the previous NIE;

(iv) A statement of the erroneous information as it appears on the previous NIE;

(v) A statement of the correct information as it should have appeared and an optional explanation of its correction; or

(vi) A statement of the information to be added. This includes optional information such as:

(A) Type of work;

(B) Rights owned by the party on whose behalf the Correction Notice is filed;

(C) Name of author;

- (D) Source country;
- (E) Year of publication;
- (F) Alternative titles;
- (G) An optional explanation of the added information.

(vii) The name and address:

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

(B) To which the acknowledgment of the recordation of the Correction NIE should be mailed; and

(viii) A certification. The certification shall consist of:

(A) A statement that, for each of the works named above, the person signing the Correction NIE is the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, and that the information is correct to the best of that person's knowledge;

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

(C) The signature and date of signature; and

(D) The telephone and telefax number at which the owner, rightholder, or agent thereof can be reached.

(4) A Correction NIE may cover multiple works in multiple NIE documents for one fee provided that: each work is identified by title; all the works are by the same author; all the works are owned by the same copyright owner or owner of an exclusive right. In the case of Correction NIEs, the notice must separately designate each title to be corrected, noting the incorrect information as it appeared on the previously filed NIE, as well as the corrected information. A single notice covering multiple titles need bear only a single certification.

(5) Copies, phonorecords or supporting documents cannot be made part of the record of a Correction NIE and should not be submitted with the document.

(6) *Time for submitting Correction NIEs.*

(i) *Major errors.* The Copyright Office will accept a Correction NIE for a major error concerning a restored work during the 24-month period beginning on the date of restoration of the work, as provided for original NIEs in section 104A(d)(2)(A) of title 17.

(ii) *Minor errors.* The Office will accept a Correction NIE for a minor error

or omission concerning a restored work at any time after the original NIE has been filed, as provided in section 104A(e)(1)(A)(iii) of title 17.

(e) *Fee—(1) Amount.* The filing fee for recording Correction NIEs is 30 U.S. dollars for each Correction Notice covering one work. For single Correction NIEs covering multiple works, that is, for works by the same author and owned by the same copyright owner or owner of an exclusive right, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work.

(2) *Method of payment.* See 37 CFR 201.33(e)(1), (2).

(f) *Public online access.* Information contained in the Correction Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system, available through the Internet. This file is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are the World Wide Web (WWW), using the Copyright Office Home Page at: <http://www.loc.gov/copyright>; directly to LOCIS through the telnet address at locis.loc.gov; or the Library of Congress through gopher LC MARVEL and WWW which are available 24 hours a day. LOCIS is available 24 hours a day, Monday through Friday. For the purpose of researching the full Office record of Correction NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item "Copyright Office Records" and/or "URAA, GATT Amends U.S. law." Images of the complete Correction NIEs as filed will be stored on optical disk and will be available from the Copyright Office.

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APPENDIX A TO § 201.34—CORRECTION
NOTICE OF INTENT TO ENFORCE

CORRECTION OF NOTICE OF INTENT TO ENFORCE

1. Name of Copyright Owner (or owner of exclusive right) If this correction notice is to cover multiple works, the author and the rights owner must be the same for all works covered by the notice.)

2. Title(s) (or brief description)

(a) Work No. 1—

Volume and Document Number: _____

English Translation: _____

(b) Work No. 2 (if applicable)—

Volume and Document Number: _____

English Translation: _____

(c) Work No. 3 (if applicable)—

Volume and Document Number: _____

English Translation: _____

(d) Work No. 4 (if applicable)—

Volume and Document Number: _____

English Translation: _____

3. Statement of incorrect information on earlier NIE:

4. Statement of correct (or previously omitted) information:

Give the following only if incorrect or omitted on earlier NIE:

(a) Type of work _____

(b) Rights owned _____

(c) Name of author (of entire work) _____

(d) Source Country _____

(e) Year of Publication (Approximate if precise year is unknown) _____

(f) Alternative titles _____

5. Explanation of error:

6. Certification and Signature: I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Name and Address (typed or printed):

Telephone/Fax:

As agent for:

Date and Signature:

[62 FR 55739, Oct. 28, 1997]

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

(a) *General.* This section prescribes rules under which copyright owners shall receive initial notice of use of their sound recordings under statutory license under section 114(f) of title 17 of the United States Code, as amended by Public Law 104–39, 109, Stat. 336.

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

(2) A *Service* is an entity engaged in the digital transmission of sound recordings, pursuant to section 114(f) of title 17 of the United States Code.

(c) *Forms.* The Copyright Office does not provide printed forms for the filing of Initial Notices.

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

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

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

(3) The telephone number and facsimile number of the Service; and

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

(e) *Signature.* The Initial Notice shall include the signature of the appropriate officer or representative of the Service transmitting sound recordings under statutory license. The signature shall be accompanied by the printed or

typewritten name and title of the person signing the Notice, and by the date of signature.

(f) *Filing.* A Service shall file the Initial Notice with the Licensing Division of the Copyright Office prior to the first transmission of sound recordings under the license, or within 45 days of the effective date of this regulation. Each Notice shall be accompanied by a filing fee of \$20. Initial Notices and amendments will be placed in the public records of the Licensing Division of the Copyright Office, and posted online where they will be accessible through the Copyright Office website. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

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

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

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

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

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

[63 FR 34296, June 24, 1998]

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

(a) *General.* This section prescribes rules under which Services shall serve copyright owners with notice of use of their sound recordings, what the content of that notice should be, and under which records of such use shall be kept and made available.

(b) *Definitions.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1) or section 114(f)(4)(A) and adopted pursu-

ant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(2) or section 114(f)(4)(B), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A *Report of Use of Sound Recordings under Statutory License* is a report required under this regulation to be provided by the Service transmitting sound recordings under statutory license.

(3) A *Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Service.* Reports of Use shall be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 114(f)(1) or section 114(f)(4)(A) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(2) or section 114(f)(4)(B), or by an order of the Librarian pursuant to 17 U.S.C. 802(f). Reports of use shall be served, by certified or registered mail, or by other means if agreed upon by the respective Service and Collective, on or before the twentieth day after the close of each month, commencing with the month succeeding the month in which these regulations become effective.

(d) *Posting.* In the event that no Collective is designated under the statutory license, or if all designated Collectives have terminated collection and distribution operations, a Service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

(2) A “click-wrap” agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the Service providing the Report of Use.

(e) *Content.* A “Report of Use of Sound Recordings under Statutory License” shall be identified as such by prominent caption or heading, and shall include a Service’s “Intended Playlists” for each channel and each day of the reported month.

(1) The “Intended Playlists” shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

- (i) The name of the service or entity;
- (ii) The channel;
- (iii) The sound recording title;
- (iv) The featured recording artist, group, or orchestra;
- (v) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the Service for purchase of the sound recording);
- (vi) The recording label;
- (vii) The catalog number;
- (viii) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;
- (ix) The date of transmission; and
- (x) The time of transmission.

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

(f) *Signature.* Reports of use shall include a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the

person signing the Report, and by the date of signature.

(g) *Format.* Reports of use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

(1) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

(2) Carats should surround strings;

(3) No carats should surround dates and numbers;

(4) Dates should be indicated by: MM/DD/YYYY;

(5) Times should be based on a 24-hour clock: HH:MM:SS;

(6) A carriage return should be at the end of each line; and

(7) All data for one record should be on a single line.

(h) *Confidentiality.* Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(i) *Documentation.* All compulsory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the Service shall serve upon all designated Collectives and retain for a period of three years from the date of transmission records of use indicating which sound recordings were performed and the number of times each recording was performed, but is not required to produce full Reports of Use or Intended Playlists for those periods.

[63 FR 34296, June 24, 1998]

§ 201.37 Designated collection and distribution organizations for records of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which records of use shall be collected and distributed under section 114(f) of title 17 of the United States Code, as amended by Public Law

104-39, 109 Stat. 336, and under which records of such use shall be kept and made available.

(b) *Definition.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1) or section 114(f)(4)(A) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(2) or section 114(f)(4)(B), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A *Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Notice of Designation as Collective under Statutory License.* A Collective shall file with the Licensing Division of the Copyright Office and post and make available online a "Notice of Designation as Collective under Statutory License," which shall be identified as such by prominent caption or heading, and shall contain the following information:

(1) The Collective name, address, telephone number and facsimile number;

(2) A statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and

(3) Information on how to gain access to the online website or home page of the Collective, where information may be posted under these regulations concerning the use of sound recordings under statutory license. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

(d) *Annual Report.* The Collective will post and make available online, for the duration of one year, an Annual Report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.

(e) *Inspection of Reports of Use by Copyright Owners.* The Collective shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording

copyright owner, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner, and the copyright owner's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. The Collective shall render its best efforts to locate copyright owners in order to make available records of use, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.

(f) *Confidentiality.* Copyright owners, their agents, and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(g) *Termination and dissolution.* If a Collective terminates its collection and distribution operations prior to the close of its term of designation, the Collective shall notify the Copyright Office, and all Services transmitting sound recordings under statutory license, by certified or registered mail. The dissolving Collective shall provide each such Service with information identifying the copyright owners it has served.

[63 FR 34297, June 24, 1998]

§201.38 Designation of agent to receive notification of claimed infringement.

(a) *General.* This section prescribes interim rules under which service providers may provide the Copyright Office with designations of agents to receive notification of claimed infringement under section 512(c)(2) of title 17 of the United States Code, as amended. These interim rules shall remain in effect until more comprehensive rules

have been promulgated following a notice of proposed rulemaking and receipt of public comments.

(b) *Forms.* The Copyright Office does not provide printed forms for filing an Interim Designation of Agent to Receive Notification of Claimed Infringement.

(c) *Content.* An “Interim Designation of Agent to Receive Notification of Claimed Infringement” shall be identified as such by prominent caption or heading, and shall include the following information with respect to a single service provider:

(1) The full legal name and address of the service provider;

(2) All names under which the service provider is doing business;

(3) The name of the agent designated to receive notification of claimed infringement;

(4) The full address, including a specific number and street name or rural route, of the agent designated to receive notification of claimed infringement. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location;

(5) The telephone number, facsimile number, and electronic mail address of the agent designated to receive notification of claimed infringement.

(d) *Signature.* The Interim Designation of Agent to Receive Notification of Claimed Infringement shall include the signature of the appropriate officer or representative of the service provider designating the agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(e) *Filing.* A service provider may file the Interim Designation of Agent to Receive Notification of Claimed Infringement with the Public Information Office of the Copyright Office, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC, during normal business hours, 9 am to 5 pm. If mailed, the Interim Designation should be addressed to: Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Each designation shall be accompanied by a filing fee of \$20.00. Designations and

amendments will be posted online on the Copyright Office’s website (<http://www.loc.gov/copyright>).

(f) *Amendments.* In the event of a change in the information reported in an Interim Designation of Agent to Receive Notification of Claimed Infringement, a service provider shall file with the Public Information Office of the Copyright Office an amended Interim Designation of Agent to Receive Notification of Claimed Infringement, containing the current information required by section 201.38(c). The amended Interim Designation shall be signed in accordance with the requirements of section 201.38(d) and shall be accompanied by a fee of \$20.00.

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

[63 FR 59234, Nov. 3, 1998]

§201.39 Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price.

(a) *General.* This section prescribes rules under which copyright owners or their agents may provide notice to qualified libraries and archives (including a nonprofit educational institution that functions as such) that a published work in its last 20 years of copyright protection is subject to normal commercial exploitation, or that a copy or phonorecord of the work can be obtained at a reasonable price, for purposes of section 108(h)(2) of title 17 of the United States Code.

(b) *Format.* The Copyright Office provides a required format for a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price, and for continuation sheets for group notices. The required format is set out in Appendix A to this section, and are available from the Copyright Office website (<http://lcweb.loc.gov/copyright>). The Copyright Office does not provide printed forms. The Notice shall be in English (except for an original title, which may be in another language), typed or printed legibly in dark ink, and shall be provided on 8½×11 inch white paper with a one-inch margin.

(c) *Required content.* A “Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price” shall be identified as such by prominent caption or heading, and shall include the following:

(1) The acronym NLA in capital, and preferably bold, letters in the top right-hand corner of the page;

(2) A check-box just below the acronym NLA indicating whether continuation sheets for additional works are attached;

(3) The title of the work, or if untitled, a brief description of the work;

(4) The author(s) of the work;

(5) The type of work (e.g., music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.);

(6) The edition, if any (e.g., first edition, second edition, teacher’s edition) or version, if any (e.g., orchestral arrangement, translation, French version). If there is no information relating to the edition or version of the work, the notice should so state;

(7) The year of first publication;

(8) The year the work first secured federal copyright through publication with notice or registration as an unpublished work;

(9) The copyright renewal registration number (except this information is not required for foreign works in which copyright is restored pursuant to 17 U.S.C. 104A);

(10) The name of the copyright owner (or the owner of exclusive rights);

(11) If the copyright owner is not the owner of all rights, a specification of the rights owned (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work);

(12) The name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that the Copyright Office should contact concerning the Notice;

(13) The full legal name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that Libraries and Archives may contact concerning the work’s normal commercial exploitation or availability at reasonable price; and

(14) A declaration made under penalty of perjury that the work identified is subject to normal commercial exploitation, or that a copy or phonorecord of the work is available at a reasonable price.

(d) *Additional content.* A Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price may include the following:

(1) The original copyright registration number of the work; and

(2) Additional information concerning the work’s normal commercial exploitation or availability at a reasonable price.

(e) *Signature.* The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price shall include the signature of the copyright owner or its agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(f) *Multiple works.* A Notice to Libraries and Archives may be filed for more than one work. The first work shall be identified using the format required for all Notices to Libraries and Archives. Each additional work in the group must be identified on a separate continuation sheet. The required format for the continuation sheet is set out in Appendix B to this section, and is available from the Copyright Office website (<http://lcweb.loc.gov/copyright>). A group filing is permitted provided that:

(1) All the works are by the same author;

(2) All the works are owned by the same copyright owner or owner of the exclusive rights therein. If the claimant is not owner of all rights, the claimant must own the same rights with respect to all works in the group;

(3) All the works first secured federal copyright in the same year, through either publication with notice or registration as an unpublished work;

(4) All the works were first published in the same year;

(5) The person or entity that the Copyright Office should contact concerning the Notice is the same for all the works; and

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(6) The person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price is the same for all the works.

(g) *Filing*—(1) *Method of filing*. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price should be addressed to: NLA, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by hand, it should be delivered during normal business hours, 8:30 a.m. to 5:00 p.m., to the Public Information Office, Room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC.

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

(3) *Method of payment*—(i) *Checks, money orders, or bank drafts*. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. Postal money orders that are negotiable only at a post office and international money orders are not acceptable. CURRENCY IS NOT ACCEPTED.

(ii) *Copyright Office Deposit Account*. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts, visit the Copyright Office website or write: Copyright Office, Library of Congress, Washington, DC 20559-6000, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

APPENDIX A TO § 201.39—REQUIRED FORMAT OF NOTICE TO LIBRARIES AND ARCHIVES OF NORMAL COMMERCIAL EXPLOITATION OR AVAILABILITY AT REASONABLE PRICE

NLA

☐ Check box if continuation sheets for additional works are attached.

Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____

2. Author(s) of the work: _____

3. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____

4. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": _____

5. Year of first publication: _____

6. Year the work first secured federal copyright through publication with notice or registration as an unpublished work: _____

7. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____

8. Full legal name of the copyright owner (or the owner of exclusive rights): _____

9. The person or entity identified in space #8 owns:

☐ all rights.

☐ the following rights (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work): _____

10. Person or entity that the Copyright Office should contact concerning the Notice:

☐ Name: _____

☐ Address: _____

☐ Telephone: _____

☐ Fax number (if any): _____

☐ E-mail address (if any): _____

11. Person or entity that libraries and archives may contact concerning the work's normal commercial exploitation or availability at a reasonable price:

☐ Name: _____

☐ Address: _____

☐ Telephone: _____

☐ Fax number (if any): _____

☐ E-mail address (if any): _____

Additional Content (OPTIONAL):

12. Original copyright registration number: _____

Copyright Office, Library of Congress

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13. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price:

Declaration:

I declare under penalty of perjury under the laws of the United States:

- ☐ that each work identified in this notice is subject to normal commercial exploitation.
- ☐ that a copy or phonorecord of each work identified in this notice is available at a reasonable price.

Signature: _____

Date: _____

☐ Typed or printed name: _____

☐ Title: _____

APPENDIX B TO § 201.39—REQUIRED FORMAT FOR CONTINUATION SHEET

NLA CON

Page ____ of ____ Pages.

Continuation Sheet for NLA Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____

2. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____

3. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, "No information available": _____

4. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____

Additional Content (OPTIONAL):

5. Original copyright registration number: _____

6. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____

[63 FR 71787, Dec. 30, 1998]

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

Sec.

202.1 Material not subject to copyright.

202.2 Copyright notice.

202.3 Registration of copyright.

202.4 Effective date of registration.

202.5—202.9 [Reserved]

202.10 Pictorial, graphic, and sculptural works.

202.11 Architectural works

202.12 Restored copyrights.

202.13—202.16 [Reserved]

202.17 Renewals.

202.18 [Reserved]

202.19 Deposit of published copies or phonorecords for the Library of Congress.

202.20 Deposit of copies and phonorecords for copyright registration.

202.21 Deposit of identifying material instead of copies.

202.22 Acquisition and deposit of unpublished television transmission programs.

202.23 Full-term retention of copyright deposits.

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

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

AUTHORITY: 17 U.S.C. 702.

§ 202.1 Material not subject to copyright.

The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:

(a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;

(b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing;

(c) Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information;

(d) Works consisting entirely of information that is common property containing no original authorship, such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources.

(e) Typeface as typeface.

[24 FR 4956, June 18, 1959, as amended at 38 FR 3045, Feb. 1, 1973; 57 FR 6202, Feb. 21, 1992]

§ 202.2 Copyright notice.

(a) *General.* (1) With respect to a work published before January 1, 1978, copyright was secured, or the right to secure it was lost, except for works seeking ad interim copyright, at the date of publication, i.e., the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time. The adequacy of the copyright notice for such a work is determined by the copyright statute as it existed on the date of first publication.

(2) If before January 1, 1978, publication occurred by distribution of copies or in some other manner, without the statutory notice or with an inadequate notice, as determined by the copyright statute as it existed on the date of first publication, the right to secure copyright was lost. In such cases, copyright cannot be secured by adding the notice to copies distributed at a later date.

(3) Works first published abroad before January 1, 1978, other than works for which ad interim copyright has been obtained, must have borne an adequate copyright notice. The adequacy of the copyright notice for such works is determined by the copyright statute as it existed on the date of first publication abroad.

(b) *Defects in notice.* Where the copyright notice on a work published before January 1, 1978, does not meet the requirements of title 17 of the United States Code as it existed on December 31, 1977, the Copyright Office will reject an application for copyright registration. Common defects in the notice include, among others the following:

(1) The notice lacks one or more of the necessary elements (i.e., the word "Copyright," the abbreviation "Copr.," or the symbol ©, or, in the case of a sound recording, the symbol Ⓒ; the name of the copyright proprietor, or, in the case of a sound recording, the name, a recognizable abbreviation of the name, or a generally known alternative designation, of the copyright owner; and, when required, the year date of publication);

(2) The elements of the notice are so dispersed that a necessary element is not identified as a part of the notice; in the case of a sound recording, however, if the producer is named on the label or container, and if no other name appears in conjunction with the notice, his name will be considered a part of the notice;

(3) The notice is not in one of the positions prescribed by law;

(4) The notice is in a foreign language;

(5) The name in the notice is that of someone who had no authority to secure copyright in his name;

(6) The year date in the copyright notice is later than the date of the year in which copyright was actually secured, including the following cases:

(i) Where the year date in the notice is later than the date of actual publication;

(ii) Where copyright was first secured by registration of a work in unpublished form, and copies of the same work as later published without change in substance bear a copyright notice containing a year date later than the year of unpublished registration;

(iii) Where a book or periodical published abroad, for which ad interim copyright has been obtained, is later published in the United States without change in substance and contains a year date in the copyright notice later than the year of first publication abroad;

Provided, however, That in each of the three foregoing types of cases, if the copyright was actually secured not more than one year earlier than the year date in the notice, registration may be considered as a doubtful case.

(7) A notice is permanently covered so that it cannot be seen without tearing the work apart;

(8) A notice is illegible or so small that it cannot be read without the aid of a magnifying glass: *Provided, however,* That where the work itself requires magnification for its ordinary use (e.g., a microfilm, microcard or motion picture) a notice which will be readable when so magnified, will not constitute a reason for rejection of the claim;

(9) A notice is on a detachable tag and will eventually be detached and discarded when the work is put in use;

(10) A notice is on the wrapper or container which is not a part of the work and which will eventually be removed and discarded when the work is put to use; the notice may be on a container which is designed and can be expected to remain with the work;

(11) The notice is restricted or limited exclusively to an uncopyrightable element, either by virtue of its position on the work, by the use of asterisks, or by other means.

[24 FR 4956, June 18, 1959; 24 FR 6163, July 31, 1959, as amended at 37 FR 3055, Feb. 11, 1972; 46 FR 33249, June 29, 1981; 46 FR 34329, July 1, 1981; 60 FR 34168, June 30, 1995]

§ 202.3 Registration of copyright.

(a) *General.* (1) This section prescribes conditions for the registration of copyright, and the application to be made for registration under sections 408 and 409 of title 17 of the United States Code, as amended by Pub. L. 94-553.

(2) For the purposes of this section, the terms *audiovisual work*, *compilation*, *copy*, *derivative work*, *device*, *fixation*, *literary work*, *motion picture*, *phonorecord*, *pictorial*, *graphic and sculptural works*, *process*, *sound recording*, and their variant forms, have the meanings set forth in section 101 of title 17. The term *author* includes an employer or other person for whom a work is "made for hire" under section 101 of title 17.

(3) For the purposes of this section, a copyright *claimant* is either:

(i) The author of a work;

(ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.¹

(b) *Administrative classification and application forms*—(1) *Classes of works.* For the purpose of registration, the Register of Copyrights has prescribed the classes of works in which copyright may be claimed. These classes, and ex-

amples of works which they include, are as follows:

(i) *Class TX: Nondramatic literary works.* This class includes all published and unpublished nondramatic literary works. Examples: Fiction; nonfiction; poetry; textbooks; reference works; directories; catalogs; advertising copy; and compilations of information.

(ii) *Class PA: Works of the performing arts.* This class includes all published and unpublished works prepared for the purpose of being performed directly before an audience or indirectly by means of a device or process. Examples: Musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; and motion pictures and other audiovisual works.

(iii) *Class VA: Works of the visual arts.* This class includes all published and unpublished pictorial, graphic, and sculptural works. Examples: Two dimensional and three dimensional works of the fine, graphic, and applied arts; photographs; prints and art reproductions; maps, globes, and charts; technical drawings, diagrams, and models; and pictorial or graphic labels and advertisements.

(iv) *Class SR: Sound recordings.* This class includes all published and unpublished sound recordings fixed on and after February 15, 1972. Claims to copyright in literary, dramatic, and musical works embodied in phonorecords may also be registered in this class under paragraph (b)(3) of this section if:

(A) Registration is sought on the same application for both a recorded literary, dramatic, or musical work and a sound recording;

(B) The recorded literary, dramatic, or musical work and the sound recording are embodied in the same phonorecord; and

(C) The same claimant is seeking registration of both the recorded literary, dramatic, or musical work and the sound recording.

(v) *Class SE: Serials.* A serial is a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely.

¹ This category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights under the copyright initially belonging to the author, the contractual right to claim legal title to the copyright in an application for copyright registration.

This class includes periodicals; newspapers; annuals; and the journals, proceedings, transactions, etc. of societies.

(2) *Application forms.* For the purpose of registration, The Register of Copyrights has prescribed the basic forms to be used for all applications submitted on and after January 1, 1978. Each form corresponds to a class set forth in paragraph (b)(1) of this section and is so designated ("Form TX"; "Form PA"; "Form VA"; "Form SR"; "Form SE"; and "Form SE/Group"). Copies of the forms are available free upon request to the Public Information Office, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559-6000. Applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed which fall into two or more classes, the application should be submitted in the class most appropriate to the type of authorship that predominates in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed² the application shall be submitted on Form SR.

(3) *Registration as a single work.* (i) For the purpose of registration on a

single application and upon payment of a single registration fee, the following shall be considered a single work:

(A) In the case of published works: All copyrightable elements that are otherwise recognizable as self-contained works, that are included in a single unit of publication, and in which the copyright claimant is the same; and

(B) In the case of unpublished works: all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished "collection." For these purposes, a combination of such elements shall be considered a "collection" if:

(1) The elements are assembled in an orderly form;

(2) The combined elements bear a single title identifying the collection as a whole;

(3) The copyright claimant in all of the elements, and in the collection as a whole, is the same; and

(4) All of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.

Registration of an unpublished "collection" extends to each copyrightable element in the collection and to the authorship, if any, involved in selecting and assembling the collection.

(ii) In the case of applications for registration made under paragraphs (b)(3) through (b)(8) of this section, the "year in which creation of this work was completed", as called for by the application, means the latest year in which the creation of any copyrightable element was completed.

(4) *Group registration of related works:*

Automated databases. (i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for automated databases and their updates or other derivative versions that are original works of authorship, if, where a database (or updates or other revisions thereof), if unpublished, is (or are) fixed, or if published is (or are) published only in the form of machine-

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

readable copies, all of the following conditions are met:

(A) All of the updates or other revisions are owned by the same copyright claimant;

(B) All of the updates or other revisions have the same general title;

(C) All of the updates or other revisions are similar in their general content, including their subject;

(D) All of the updates or other revisions are similar in their organization;

(E) Each of the updates or other revisions as a whole, if published before March 1, 1989, bears a statutory copyright notice as first published and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice;

(F) Each of the updates or other revisions if published was first published, or if unpublished was first created, within a three-month period in a single calendar year; and

(G) The deposit accompanying the application complies with § 202.20(c)(2)(vii)(D).

(ii) A single registration may be made on one application for both a database published on a single date, or if unpublished, created on a single date, and also for its copyrightable revisions, including updates covering a three-month period in a single calendar year. An application for group registration of automated databases under section 408(c)(1) of title 17 and this subsection shall consist of:

(A) A Form TX, completed in accordance with the basic instructions on the form and the Special Instructions for Group Registration of an Automated Database and its Updates or Revisions;

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

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

(5) *Group registration of related serials.*

(i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of serials published at intervals of a week or longer if all the following conditions are met:

(A) The Library of Congress receives two complimentary copies promptly after publication of each issue of the serial.

(B) The single application covers no more than the issues published in a given three month period.

(C) The claim to copyright for which registration is sought is in the collective work.

(D) The collective work authorship is essentially new material that is being published for the first time.

(E) The collective work is a work made for hire.

(F) The author(s) and claimant(s) of the collective work are the same person(s) or organization(s).

(G) Each issue must have been created no more than one year prior to publication and all issues included in the group registration must have been published in the same calendar year.

(ii) To be eligible for group registration of serials, publishers must submit a letter affirming that two complimentary subscriptions to the particular serial have been entered for the Library of Congress. The letter should be sent to Library of Congress, 'Group Periodicals Registration,' Washington, DC 20540-4161.

(iii) The complimentary subscription copies must be addressed to: Group Periodicals Registration Library of Congress, Washington, DC 20540-4161.

(iv) The Register of Copyrights may revoke the privilege of group registration of serials for any publisher who fails to submit the required complimentary subscription copies promptly after publication of each issue. Notice of revocation of the group registration of serials privilege shall be given in writing and shall be sent to the individual person or organization applying for group registration of serials, at the last address shown in the records of the Copyright Office. A notice of revocation may be given at any time if the requirements of the regulation are not satisfied, but it shall state a specific date of revocation that is at least 30 days later than the date the notice is mailed.

(v) To apply for group registration of serials under section 408(c)(1) of title 17 and this subsection, the following

items must be sent together in the same package:

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

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

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

(6) *Group registration of daily newspapers.* (i) Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, microfilm deposit, and filing fee, a single registration may be made for a group of daily newspapers published in a microfilm format if the following conditions are met:

(A) Registration covers a full month of issues of the same newspaper title published with issue dates in one calendar month.

(B) A completed GDN application form is submitted.

(C) A publication date is specified designating the first and last day that issues in the group were published.

(D) A deposit is made of positive, 35mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month. In addition to the final edition of the daily newspaper, the claim to copyright and the deposit may also include earlier editions published the same day in a given metropolitan area served by the newspaper, but may not include national or regional editions distributed beyond a given metropolitan area.

(E) The appropriate filing fee, as required in §201.3(c), is included with the submission, or charged to an active deposit account.

(F) Registration is sought within three months after the publication date of the last issue included in the group.

(ii) As used in this regulation, newspapers means serials which are classified as newspapers under the policy document "Newspapers Received Currently in the Library of Congress," which is administered by the Newspaper Section of the Serials &

Government Publications Division of the Library of Congress. In general, serials classified as newspapers are serials mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

(7) *Group registration of contributions to periodicals.* (i) As provided by section 408(c)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, a single registration, on the basis of a single application, deposit, and registration fee, may be made for a group of works if all of the following conditions are met:

(A) All of the works are by the same author;

(B) The author of each work is an individual, and not an employer or other person for whom the work was made for hire;

(C) Each of the works first published as a contribution to a periodical (including newspapers) within a twelve-month period;³

(D) Each of the works, if first published before March 1, 1989, bore a separate copyright notice, and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice; and

(E) The deposit accompanying the application consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published.

(ii) An application for group registration under section 408(c)(2) of title 17 and this §202.3(b)(7) shall consist of:

(A) A basic application for registration on Form TX, Form PA, or Form

³This does not require that each of the works must have been first published during the same calendar year; it does require that, to be grouped in a single application, the earliest and latest contributions must not have been first published more than twelve months apart.

VA,⁴ which shall contain the information required by the form and its accompanying instructions;

(B) An adjunct form prescribed by the Copyright Office and designated "Adjunct Application for Copyright Registration for a Group of Contributions to Periodicals (Form GR/CP)", which shall contain the information required by the form and its accompanying instructions; and

(C) The appropriate filing fee, as required in §201.3(c), and the deposit required by paragraph (b)(7)(i)(E) of this section.

(8) *Group registration of daily newsletters.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of two or more issues of a daily newsletter if the following conditions are met:

(i) As used in this regulation, daily newsletter means a serial published and distributed by mail or electronic media (online or telefacsimile), or in any medium including but not limited to, paper, cassette tape, diskette or CD-ROM). Publication must occur on at least two days each week and the newsletter must contain news or information of interest chiefly to a special group (for example, trade and professional associations, corporate in-house groups, schools, colleges, or churches).

(ii) The works must be essentially all new collective works or all new issues that have not been published before.

(iii) Each issue must be a work made for hire.

(iv) The author(s) and claimant(s) must be the same person(s) or organization(s) for all of the issues.

(v) All the items in the group must bear issue dates within a single calendar month under the same continuing title.

⁴The basic application should be filed in the class appropriate to the nature of authorship in the majority of the contributions. However, if any of the contributions consists preponderantly of nondramatic literary material that is in the English language, the basic application for the entire group should be submitted on Form TX.

(vi) Deposit. (A). The deposit for newsletters registered under this section is one complete copy of each issue included in the group.

(B). In addition, if requested in writing by the Copyright Acquisitions Division before an application for registration is submitted, the claimant must give the Library of Congress whichever of the following the Library prefers: either as many as two complimentary subscriptions of the newsletter in the edition most suitable to the Library's needs, or a single positive, 35 mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month. Subscription copies must be delivered to the separate address specified by the Copyright Acquisitions Division in its request. Subscription copies or a microfilm are not required unless expressly requested by the Copyright Acquisitions Division.

(C) The copyright owner of any newsletter that cannot meet the criteria set out in this section may continue to register on Form SE or Short Form SE.

(vii) Registration is sought within three months after the publication date of the last issue included in the group.

(viii) A Form G/DN shall be submitted for daily newsletters bearing issue dates within a single month, together with one copy of each issue, and a filing fee. The application shall designate the first and last day that issues in the group were published.

(9) *One registration per work.* As a general rule only one copyright registration can be made for the same version of a particular work. However:

(i) Where a work has been registered as unpublished, another registration may be made for the first published edition of the work, even if it does not represent a new version;

(ii) Where someone other than the author is identified as copyright claimant in a registration, another registration for the same version may be made

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by the author in his or her own name as copyright claimant;⁵

(iii) Where an applicant for registration alleges that an earlier registration for the same version is unauthorized and legally invalid, a registration may be made by that applicant; and

(iv) Supplementary registrations may be made, under the conditions of § 201.5 of these regulations, to correct or amplify the information in a registration made under this section.

(c) *Application for registration.* (1) An application for copyright registration may be submitted by any author or other copyright claimant of a work, or the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner.

(2) An application for copyright registration shall be submitted on the appropriate form prescribed by the Register of Copyrights under paragraph (b) of this section, and shall be accompanied by the appropriate filing fee, as required in § 201.3(c), and the deposit required under 17 U.S.C. 408 and § 202.20 of these regulations.⁶ The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(i) A designation of whether the applicant is the author of, or other copyright claimant or owner of exclusive rights in, the work, or the duly authorized agent of such author, other claim-

ant, or owner (whose identity shall also be given);

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

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

(iv) The date of certification.

An application for registration of a published work will not be accepted if the date of certification is earlier than the date of publication given in the application.

(Pub. L. 94–553; secs. 408, 409, 410, 702)

[43 FR 966, Jan. 5, 1978; as amended at 54 FR 13181, Mar. 31, 1989; 54 FR 21059, May 16, 1989; 55 FR 50557, Dec. 7, 1990; 56 FR 7813, 7815 Feb. 26, 1991; 56 FR 27197, June 13, 1991; 56 FR 59885, Nov. 26, 1991; 56 FR 65190, Dec. 16, 1991; 57 FR 39616, Sept. 1, 1992; 58 FR 17778, Apr. 6, 1993; 60 FR 15875, Mar. 28, 1995; 60 FR 34168, June 30, 1995; 62 FR 63657, Dec. 2, 1997; 62 FR 66822, Dec. 22, 1997; 64 FR 29522, 29523, June 1, 1999]

§ 202.4 Effective date of registration.

The effective date of registration for claims received in the Copyright Office on or after January 3, 1991, and through December 31, 1991, with a short fee of \$10 is the date on which the application, deposit, and \$10 fee have all been received in the Copyright Office, provided, the claim is later determined to be acceptable for registration by the Register of Copyrights and a supplementary fee of \$10 is received in the Copyright Office. If the supplementary fee is not received promptly after notification of the short fee, the Copyright Office will initiate a proceeding to cancel the copyright registration. If the supplementary fee of \$10 is not received in the Copyright Office before the cancellation proceeding is completed, the cancellation will become final and will result in the loss of the effective date of registration. After cancellation, registration could be obtained only by submitting a new application, deposit, and filing fee.

[55 FR 50001, Dec. 4, 1990]

⁵An *author* includes an employer or other person for whom a work is “made for hire” under 17 U.S.C. 101. This paragraph does not permit an employee or other person working “for hire” under that section to make a later registration in his or her own name. In the case of authors of a joint work, this paragraph does permit a later registration by one author in his or her own name as copyright claimant, where an earlier registration identifies only another author as claimant.

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

§§ 202.5–202.9 [Reserved]**§ 202.10 Pictorial, graphic, and sculptural works.**

(a) In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form. The registrability of such a work is not affected by the intention of the author as to the use of the work or the number of copies reproduced. The availability of protection or grant of protection under the law for a utility or design patent will not affect the registrability of a claim in an original work of pictorial, graphic, or sculptural authorship.

(b) A claim to copyright cannot be registered in a print or label consisting solely of trademark subject matter and lacking copyrightable matter. While the Copyright Office will not investigate whether the matter has been or can be registered at the Patent and Trademark Office, it will register a properly filed copyright claim in a print or label that contains the requisite qualifications for copyright even though there is a trademark on it. However, registration of a claim to copyright does not give the claimant rights available by trademark registrations at the Patent and Trademark Office.

[46 FR 33249, June 29, 1981, as amended at 60 FR 15606, Mar. 24, 1995; 61 FR 5445, Feb. 12, 1996]

§ 202.11 Architectural works.

(a) *General.* This section prescribes rules pertaining to the registration of architectural works, as provided for in the amendment of title 17 of the United States Code by the Judicial Improvements Act of 1990, Public Law 101-650.

(b) *Definitions.* (1) For the purposes of this section, the term *architectural work* has the same meaning as set forth in section 101 of title 17, as amended.

(2) The term *building* means humanly habitable structures that are intended to be both permanent and stationary, such as houses and office buildings, and other permanent and stationary structures designed for human occupancy, including but not limited to churches, museums, gazebos, and garden pavilions.

(c) *Registration*—(1) *Original design.* In general, an original design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings, may be registered as an architectural work.

(2) *Registration limited to single architectural work.* For published and unpublished architectural works, a single application may cover only a single architectural work. A group of architectural works may not be registered on a single application form. For works such as tract housing, a single work is one house model, with all accompanying floor plan options, elevations, and styles that are applicable to that particular model.

(3) *Application form.* Registration should be sought on Form VA. Line one of the form should give the title of the building. The date of construction of the building, if any, should also be designated. If the building has not yet been constructed, the notation “not yet constructed” should be given following the title.

(4) *Separate registration for plans.* Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately.

(5) *Publication.* Publication of an architectural work occurs when underlying plans or drawings of the building or other copies of the building design are distributed or made available to the general public by sale or other transfer of ownership, or by rental, lease, or lending. Construction of a building does not itself constitute publication for purposes of registration, unless multiple copies are constructed.

(d) *Works excluded.* The following structures, features, or works cannot be registered:

(1) *Structures other than buildings.* Structures other than buildings, such as bridges, cloverleafs, dams, walkways, tents, recreational vehicles, mobile homes, and boats.

(2) *Standard features.* Standard configurations of spaces, and individual standard features, such as windows, doors, and other staple building components.

(3) *Pre-December 1, 1990 building designs.* The designs of buildings where the plans or drawings of the building were published before December 1, 1990, or the buildings were constructed or otherwise published before December 1, 1990.

[57 FR 45310, Oct. 1, 1992]

§ 202.12 Restored copyrights.

(a) *General.* This section prescribes rules pertaining to the registration of foreign copyright claims which have been restored to copyright protection under section 104A of 17 U.S.C., as amended by the Uruguay Round Agreements Act, Public Law 103-465.

(b) *Definitions.* (1) For the purposes of this section, restored work and source country, have the definition given in the URAA and § 201.33(b) of this chapter.

(2) *Descriptive statement for a work embodied solely in machine-readable format* is a separate written statement giving the title of the work, nature of the work (for example: computer program, database, videogame, etc.), plus a brief description of the contents or subject matter of the work.

(c) *Registration—(1) General.* Application, deposit, and filing fee for registering a copyright claim in a restored work under section 104A, as amended, may be submitted to the Copyright Office on or after January 1, 1996. The application, filing fee, and deposit should be sent in a single package to the following address: Library of Congress, Copyright Office, 101 Independence Avenue SE., Washington, DC 20559-6000.

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

8½ by 11 inch white paper, and printed head to head so that page two is printed on the back of page one.

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

(ii) *Method of payment—(A) Checks, money orders, or bank drafts.* The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. In addition, international money orders, and postal money orders that are negotiable only at a post office are not acceptable. CURRENCY WILL NOT BE ACCEPTED.

(B) *Copyright Office Deposit Account.* The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

(C) *Credit cards.* For URAA registrations the Copyright Office will accept VISA, MasterCard, and American Express. Debit cards cannot be accepted for payment. With the registration application, an applicant using a credit card must submit a separate cover letter stating the name of the credit card, the credit card number, the expiration date of the credit card, the total

amount authorized and a signature authorizing the Office to charge the fees to the account. To protect the security of the credit card number, the applicant must not write the credit card number on the registration application.

(4) *Deposit*—(i) *General*. The deposit for a work registered as a restored work under the amended section 104A, except for those works listed in paragraphs (c)(4) (ii) through (iv) of this section, should consist of one copy or phonorecord which best represents the copyrightable content of the restored work. In descending order of preference, the deposit should be:

- (A) The work as first published;
- (B) A reprint or re-release of the work as first published;
- (C) A photocopy or identical reproduction of the work as first published; or
- (D) A revised version which includes a substantial amount of the copyrightable content of the restored work with an indication in writing of the percentage of the restored work appearing in the revision.

(ii) *Previously registered works*. No deposit is needed for works previously registered in the Copyright Office.

(iii) *Works embodied solely in machine-readable format*. For works embodied only in machine-readable formats, the deposit requirements are as follows:

- (A) One machine-readable copy and a descriptive statement of the work; or
- (B) Representative excerpts of the work, such as printouts; or, if the claim extends to audiovisual elements in the work, a videotape of what appears on the screen.

(iv) *Pictorial, graphic and sculptural works*. With the exception of 3-dimensional works of art, the general deposit preferences specified under paragraph (c)(4)(i) of this section shall govern. For 3-dimensional works of art, the preferred deposit is one or more photographs of the work, preferably in color.

(v) *Special relief*. An applicant who is unable to submit any of the preferred deposits may seek an alternative deposit under special relief (37 CFR 202.20(d)). In such a case, the applicant should indicate in writing why the deposit preferences cannot be met, and submit alternative identifying mate-

rials clearly showing some portion of the copyrightable contents of the restored work which is the subject of registration.

(vi) *Motion pictures*. If the deposit is a film print (16 or 35 mm), the applicant should contact the Performing Arts Section of the Examining Division for delivery instructions. The telephone number is: (202) 707-6040; the telefax number is: (202) 707-1236.

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

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

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

(d) *Works excluded*. Works which are not copyrightable subject matter under

title 17 of the U.S. Code, other than sound recordings fixed before February 15, 1972, shall not be registered as restored copyrights.

[60 FR 50422, Sept. 29, 1995, as amended at 64 FR 12902, Mar. 16, 1999; 64 FR 29522, June 1, 1999]

§§ 202.13—202.16 [Reserved]

§ 202.17 Renewals.

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

(b) *Definition.* For purposes of this section, the term *posthumous work* means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

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

(d) *Original term registration.*

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

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

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

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

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

apply for renewal registration by telegraphic, telefacsimile, or similar written communication. An application made by this method will be accepted only if:

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

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

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

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

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

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

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be registered in the name of the proprietor; and

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

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

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

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

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii) (C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) The author has left a will which names no executor;

(B) The author has left a will which names an executor who cannot or will not serve in that capacity; or

(C) The author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the

name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(g) *Application for renewal registration.*

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

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

(ii) An application for renewal registration shall be accompanied by the appropriate fee, as required in § 201.3(c). The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or the duly authorized agent of such claimant (whose identity shall also be given);

(B) The handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person;

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

(D) The date of certification.

(iii) In the case of an application for renewal registration of a work for which no original registration was

made, the application shall be accompanied by an Addendum and deposit material in accordance with paragraph (h) of this section.

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

(h) *Addendum for an unregistered work*—(1) *Content.* If original term registration is not timely made for a work, the renewal application Form RE must be accompanied by an Addendum to Form RE which must contain the following information:

(i) The title of the work;

(ii) The name of the author(s);

(iii) The date of first publication of the work;

(iv) The place of first publication of the work;

(v) The citizenship of the author(s) on the date of first publication of the work;

(vi) The domicile of the author(s) on the date of first publication of the work;

(vii) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the copyright notice required by the Copyright Act of 1909, title 17 of the United States Code in effect on December 31, 1977, and that United States copyright subsists in the work; and

(viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act of 1909 as it existed at the time the work was published, the Addendum must also contain information about the country of manufacture and the manufacturing processes.

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

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

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

(4) *Waiver of the deposit requirement.* In a case where the renewal applicant asserts that it is either physically impossible or otherwise an undue hardship to satisfy the deposit requirements of §§202.20 and 202.21, the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in the descending order of preference:

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

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

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

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

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

[57 FR 60483, Dec. 21, 1992, as amended at 64 FR 29522, June 1, 1999]

§ 202.18 [Reserved]

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress

under section 407 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in §202.20 of these regulations.

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

(1)(i) The *best edition* of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the “best edition” from among two or more published editions of the same version of the same work are set forth in the statement entitled “Best Edition of Published Copyrighted Works for the Collections of the Library of Congress” (hereafter referred to as the “Best Edition Statement”) in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Copyright Acquisitions Division.

(iii) Where no specific criteria for the selection of the “best edition” are established in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the “best edition”. In such cases:

(A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the “best edition” and (except in cases for which special relief is granted) will require deposit of that edition; and

(B) When a potential depositor is uncertain which of two or more published editions comprises the “best edition”, inquiry should be made to the Copyright Acquisitions Division.

(iv) Where differences between two or more “editions” of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria

of “best edition” based on such differences do not apply.

(2) A *complete* copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a “complete” phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container). In the case of a musical composition published in copies only, or in both copies and phonorecords:

(i) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a “complete” copy; and

(ii) If the only publication of copies in the United States took place by the rental, lease, or lending of a conductor’s score and parts, a conductor’s score is a “complete” copy.

In the case of a motion picture, a copy is “complete” if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms *architectural works*, *copies*, *collective work*, *device*, *fixed*, *literary work*, *machine*, *motion picture*, *phonorecord*, *publication*, *sound recording*, *useful article*, and their variant forms, have the meanings given to them in 17 U.S.C. 101.

(c) *Exemptions from deposit requirements.* The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical informa-

tion in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

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

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textiles and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter, including catalogs, published in connection with the rental lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services.

(8) Tests, and answer material for tests when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole, from the applicable deposit requirements for the collective work.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if:

(i) Registration for the work was made under 17 U.S.C. 408 before the work was published in the United States; or

(ii) Registration for the work was made under 17 U.S.C. 408 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture, from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(d) *Nature of required deposit.* (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of:

(i) In the case of published works other than sound recordings, two complete copies of the best edition; and

(ii) In the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representa-

tions of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion pictures, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit of a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library with respect to such copies. In the event of termination of such an agreement by the Library it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by:

(A) Two sets of precise instructions for displaying the image fixed in the hologram; and

(B) Two sets of identifying material in compliance with §202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with §202.21 of these regulations, will suffice in lieu of the

two copies required by paragraph (d)(1) of this section.

(v) In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies in the United States took place by rental, lease, or lending, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multimedia kits, that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vii) In the case of published computer programs and published computerized information works, such as statistical compendia, serials, and reference works that are not copy-protected, the deposit of one complete copy of the best edition as specified in the current Library of Congress Best Edition Statement will suffice in lieu of the two copies required by paragraph (d)(1) of this section. If the works are copy-protected, two copies of the best edition are required.

(viii) In the case of published architectural works, the deposit shall consist of the most finished form of presentation drawings in the following descending order of preference:

(A) Original format, or best quality form of reproduction, including offset or silk screen printing;

(B) Xerographic or photographic copies on good quality paper;

(C) Positive photostat or photodirect positive;

(D) Blue line copies (diaz or ozalid process). If photographs are submitted, they should be 8 x 10 inches and should clearly show several exterior and interior views. The deposit should disclose the name(s) of the architect(s) and draftsman(s) and the building site.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the

Register may determine after such consultation:

(i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or

(ii) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or

(iii) Permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or

(iv) Permit the deposit of identifying material which does not comply with § 202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Examining Division, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit made earlier under the grant of special relief.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and

phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by an application for registration of a claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application. Copies or phonorecords deposited without such an accompanying application and either a fee or a deposit account notation will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a certificate of receipt for the deposit of copies or phonorecords of a work under this section. Certificates of receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a certificate of receipt must be in writing and accompanied by the appropriate fee, as required in § 201.3(c). A certificate of receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

[51 FR 6403, Feb. 24, 1986, as amended at 54 FR 42299, Oct. 16, 1989; 56 FR 47403, Sept. 19, 1991; 56 FR 59885, Nov. 26, 1991; 57 FR 45310, Oct. 1, 1992; 60 FR 34168, June 30, 1995; 64 FR 29522, June 1, 1999]

§ 202.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553.

The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

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

(1) The *best edition* of a work has the meaning set forth in § 202.19(b)(1) of these regulations.

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

(i) *Unpublished works.* Subject to the requirements of paragraph (b)(2)(vi) of this section, a “complete” copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought;

(ii) *Published works.* Subject to the requirements of paragraphs (b)(2)(iii) through (vi) of this section, a “complete” copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter. However, even where certain physically separable elements included in the applicable unit of publication are missing from the deposit, a copy or phonorecord will be considered “complete” for purposes of registration where:

(A) The copy or phonorecord deposited contains all parts of the work for which copyright registration is sought; and

(B) The removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and

(C) The work is exempt from the mandatory deposit requirements under section 407 of title 17 of the United States Code and § 202.19(c) of these regulations, or the copy deposited consists entirely of a container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptacle acceptable for deposit under paragraph (c)(2) of this section;

(iii) *Contributions to collective works.* In the case of a published contribution to a collective work, a “complete” copy is one complete copy of the best edition of the entire collective work,

the complete section containing the contribution if published in a newspaper, the contribution cut from the paper in which it appeared, or a photocopy of the contribution itself as it was published in the collective work.

(iv) *Sound recordings*. In the case of published sound recordings, a “complete” phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations;

(v) *Musical scores*. In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) If the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a “complete” copy; and

(B) If the only publication of copies took place by the rental, lease, or lending of a conductor’s score and parts, a conductor’s score is a “complete” copy;

(vi) *Motion pictures*. In the case of a published or unpublished motion picture, a copy is “complete” if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms *architectural works*, *copy*, *collective work*, *device*, *fixed*, *literary work*, *machine*, *motion picture*, *phonorecord*, *publication*, *sound recording*, *transmission program*, and *useful article*, and their variant forms, have the meanings given to them in 17 U.S.C. 101.

(4) A *secure test* is a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

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

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considered as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(c) *Nature of required deposit*. (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, one complete copy or phonorecord of the work either as first published or of the best edition. For purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) *General*. In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords:

(A) Published three-dimensional cartographic representations of area, such as globes and relief models;

(B) Published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing;

(C) Published greeting cards, picture postcards, and stationery;

(D) Lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or more authors;

(E) Musical compositions published in copies only, or in both copies and phonorecords, if the only publication of copies took place by rental, lease, or lending;

(F) Published multimedia kits or any part thereof;

(G) Works exempted from the requirement of depositing identifying material under paragraph (c)(2)(xi)(B)(5) of this section;

(H) Literary, dramatic, and musical works published only as embodied in phonorecords, although this category does not exempt the owner of copyright in a sound recording;

(I) Choreographic works, pantomimes, literary, dramatic, and musical works published only as embodied in motion pictures;

(J) Published works in the form of two-dimensional games, decals, fabric patches or emblems, calendars, instructions for needle work, needle work and craft kits; and

(K) Works reproduced on three-dimensional containers such as boxes, cases, and cartons.

(ii) *Motion pictures.* In the case of published or unpublished motion pictures, the deposit of one complete copy will suffice. The deposit of a copy or copies for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. In any case where the deposit copy or copies required for registration of a motion picture cannot be viewed for examining purposes on equipment in the Examining Division of the Copyright Office, the description accompanying the deposit must comply with § 202.21(h) of these regulations. The Library of Congress may, at its sole discretion, enter into an agree-

ment permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library of Congress with respect to such copies. In the event of termination of such an agreement by the Library, it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement. In the case of unpublished motion pictures (including television transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy. In the case of colorized versions of motion pictures made from pre-existing black and white motion pictures, in addition to the deposit of one complete copy of the colorized motion picture and the separate description of its contents as specified above, the deposit shall consist of one complete print of the black and white version of the motion picture from which the colorized version was prepared. If special relief from this requirement is requested and granted, the claimant shall make a good faith effort to deposit the best available, near-archival quality black and white print, as a condition of any grant of special relief.

(iii) *Holograms.* In the case of any work deposited in the form of a three-dimensional hologram, the copy or copies shall be accompanied by:

(A) Precise instructions for displaying the image fixed in the hologram; and

(B) Photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image.

The number of sets of instructions and identifying material shall be the same as the number of copies required. In the case of a work in the form of a two-dimensional hologram, the image of which is visible without the use of a

machine or device, one actual copy of the work shall be deposited.

(iv) *Certain pictorial and graphic works.* In the case of any unpublished pictorial or graphic work, deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of deposit of an actual copy. In the case of a published pictorial or graphic work, deposit of one complete copy, or of identifying material in compliance with § 202.21 of these regulations, may be made and will suffice in lieu of deposit of two actual copies where an individual author is the owner of copyright, and either:

(A) Less than five copies of the work have been published; or

(B) The work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter, including catalogs, published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies except under the conditions of paragraph (c)(2)(xi)(B)(4) of this section.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: Provided, That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Computer programs and databases embodied in machine-readable copies other than CD-ROM format.* In cases

where a computer program, database, compilation, statistical compendium, or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, semiconductor chip products, or the like) other than a CD-ROM format, from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes “identifying portions” shall mean one of the following:

(1) The first and last 25 pages or equivalent units of the source code if reproduced on paper, or at least the first and last 25 pages or equivalent units of the source code if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any. If the program is 50 pages or less, the required deposit will be the entire source code. In the case of revised versions of computer programs, if the revisions occur throughout the entire program, the deposit of the page containing the copyright notice and the first and last 25 pages of source code will suffice; if the revisions do not occur in the first and last 25 pages, the deposit should consist of the page containing the copyright notice and any 50 pages of source code representative of the revised material; or

(2) Where the program contains trade secret material, the page or equivalent unit containing the copyright notice, if any, plus one of the following: the first and last 25 pages or equivalent units of source code with portions of the source code containing trade secrets blocked-out, provided that the blocked-out portions are proportionately less than the material remaining, and the deposit reveals an appreciable amount of original computer code; or the first and last 10 pages or equivalent units of source code alone with no blocked-out portions; or the first and last 25 pages of object code, together with any 10 or more consecutive pages of source code with no blocked-out portions; or for

programs consisting of, or less than, 50 pages or equivalent units, entire source code with the trade secret portions blocked-out, provided that the blocked-out portions are proportionately less than the material remaining, and the remaining portion reveals an appreciable amount of original computer code. If the copyright claim is in a revision not contained in the first and last 25 pages, the deposit shall consist of either 20 pages of source code representative of the revised material with no blocked-out portions, or any 50 pages of source code representative of the revised material with portions of the source code containing trade secrets blocked-out, provided that the blocked-out portions are proportionately less than the material remaining and the deposit reveals an appreciable amount of original computer code. Whatever method is used to block out trade secret material, at least an appreciable amount of original computer code must remain visible.

(B) Where registration of a program containing trade secrets is made on the basis of an object code deposit the Copyright Office will make registration under its rule of doubt and warn that no determination has been made concerning the existence of copyrightable authorship.

(C) Where the application to claim copyright in a computer program includes a specific claim in related computer screen displays, the deposit, in addition to the identifying portions specified in paragraph (c)(2)(vii)(A) of this section, shall consist of:

(1) Visual reproductions of the copyrightable expression in the form of printouts, photographs, or drawings no smaller than 3x3 inches and no larger than 9x12 inches; or

(2) If the authorship in the work is predominantly audiovisual, a one-half inch VHS format videotape reproducing the copyrightable expression, except that printouts, photographs, or drawings no smaller than 3x3 inches and no larger than 9x12 inches must be deposited in lieu of videotape where the computer screen material simply constitutes a demonstration of the functioning of the computer program.

(D) For published and unpublished automated databases, compilations,

statistical compendia, and the like, so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes:

(1) *Identifying portions* shall generally mean either the first and last 25 pages or equivalent units of the work if reproduced on paper or in microform.

(2) *Datafile* and *file* shall mean a group of data records pertaining to a common subject matter regardless of their size or the number of data items in them.

(3) In the case of individual registration of a revised version of the works identified in this paragraph (c)(2)(vii)(D), the identifying portions deposited shall contain 50 representative pages or data records which have been added or modified.

(4) If the work is an automated database comprising multiple separate or distinct data files, "identifying portions" shall instead consist of 50 complete data records from each data file or the entire data file, whichever is less, and the descriptive statement required by paragraph (c)(2)(vii)(D)(5).

(5) In the case of group registration for revised or updated versions of a database, the claimant shall deposit identifying portions that contain 50 representative pages or equivalent units, or representative data records which have been marked to disclose (or do in fact disclose solely) the new material added on one representative publication date if published, or on one representative creation date, if unpublished, and shall also deposit a brief typed or printed descriptive statement containing the notice of copyright information required under (6) or (7) immediately below, if the work bears a notice, and;

(i) The title of the database;

(ii) A subtitle, date of creation or publication, or other information, to distinguish any separate or distinct data files for cataloging purposes;

(iii) The name and address of the copyright claimant;

(iv) For each separate file, its name and content, including its subject, the

origin(s) of the data, and the approximate number of data records it contains; and

(v) In the case of revised or updated versions of an automated database, information as to the nature and frequency of changes in the database and some identification of the location within the database or the separate data files of the revisions.

(6) For a copyright notice embodied in machine-readable form, the statement shall describe exactly the visually perceptible content of the notice which appears in or with the database, and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.).

(7) If a visually perceptible copyright notice is placed on any copies of the work (or on magnetic tape reels or containers therefor), a sample of such notice must also accompany the statement.

(viii) *Machine-readable copies of works other than computer programs, databases, and works fixed in a CD-ROM format.* Where a literary, musical, pictorial, graphic, or audiovisual work, or a sound recording, except for works fixed in a CD-ROM format and literary works which are computer programs, databases, compilations, statistical compendia or the like, if unpublished has been fixed or, if published, has been published only in machine-readable form, the deposit must consist of identifying material. The type of identifying material submitted should generally be appropriate to the type of work embodied in machine-readable form, but in all cases should be that which best represents the copyrightable content of the work. In all cases the identifying material must include the title of the work. A synopsis may also be requested in addition to the other deposit materials as appropriate in the discretion of the Copyright Office. In the case of any published work subject to this section, the identifying material must include a representation of the copyright notice, if one exists. Identifying material requirements for certain types of works are specified below. In the case of the types of works listed below, the requirements speci-

fied shall apply except that, in any case where the specific requirements are not appropriate for a given work the form of the identifying material required will be determined by the Copyright Office in consultation with the applicant, but the Copyright Office will make the final determination of the acceptability of the identifying material.

(A) For pictorial or graphic works, the deposit shall consist of identifying material in compliance with § 202.21 of these regulations;

(B) For audiovisual works, the deposit shall consist of either a videotape of the work depicting representative portions of the copyrightable content, or a series of photographs or drawings, depicting representative portions of the work, plus in all cases a separate synopsis of the work;

(C) For musical compositions, the deposit shall consist of a transcription of the entire work such as a score, or a reproduction of the entire work on an audiocassette or other phonorecord;

(D) For sound recordings, the deposit shall consist of a reproduction of the entire work on an audiocassette or other phonorecord;

(E) For literary works, the deposit shall consist of a transcription of representative portions of the work including the first and last 25 pages or equivalent units, and five or more pages indicative of the remainder.

(ix) *Copies containing both visually-perceptible and machine-readable material other than a CD-ROM format.* Where a published literary work is embodied in copies containing both visually-perceptible and machine-readable material, except in the case of a CD-ROM format, the deposit shall consist of the visually-perceptible material and identifying portions of the machine-readable material.

(x) *Works reproduced in or on sheetlike materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheetlike materials such as textiles and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material,

the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with §202.21 of these regulations instead of a copy. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a two-dimensional object such as wearing apparel, bed linen, or a similar item, and the work has been published only in that form, the deposit must consist of identifying material complying with §202.21 of these regulations instead of a copy unless the copy can be folded for storage in a form that does not exceed four inches in thickness.

(xi) *Works reproduced in or on three-dimensional objects.* (A) In the following cases the deposit must consist of identifying material complying with §201.21 of these regulations instead of a copy or copies:

(1) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form. Examples of such works include statues, carvings, ceramics, moldings, constructions, models, and maquettes; and

(2) Any two-dimensional or three-dimensional work that, if unpublished, has been fixed, or, if published, has been published only in or on jewelry, dolls, toys, games, except as provided in paragraph (c)(2)(xi)(B)(3) below, or any three-dimensional useful article.

(B) In the following cases the requirements of paragraph (c)(2)(xi)(A) of this section for the deposit of identifying material shall not apply:

(1) Three-dimensional cartographic representations of area, such as globes and relief models;

(2) Works that have been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works;

(3) Published games consisting of multiple parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than 12x24x6 inches;

(4) Works reproduced on three-dimensional containers or holders such as boxes, cases, and cartons, where the container or holder can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage, and the copy, when flattened, does not exceed 96 inches in any dimension; or

(5) Any three-dimensional sculptural work that, if unpublished, has been fixed, or, if published, has been published only in the form of jewelry cast in base metal which does not exceed four inches in any dimension.

(xii) *Soundtracks.* For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with §202.21 of these regulations will suffice in lieu of an actual copy of the motion picture.

(xiii) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds 96 inches in any dimension, identifying material complying with §202.21 of these regulations must be submitted instead of an actual copy or copies.

(xiv) *Pictorial advertising material.* In the case of published pictorial advertising material, except for advertising material published in connection with motion pictures, the deposit of either one copy as published or prepublication material consisting of camera-ready copy is acceptable.

(xv) *Contributions to collective works.* In the case of published contributions to collective works, the deposit of either one complete copy of the best edition of the entire collective work, the complete section containing the contribution if published in a newspaper,

the entire page containing the contribution, the contribution cut from the paper in which it appeared, or a photocopy of the contribution itself as it was published in the collective work, will suffice in lieu of two complete copies of the entire collective work.

(xvi) *Phonorecords.* In any case where the deposit phonorecord or phonorecords submitted for registration of a claim to copyright is inaudible on audio playback devices in the Examining Division of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section.

(xvii) *Group registration of serials.* For group registration of related serials, as specified in §202.3(b)(6), the deposit must consist of one complete copy of the best edition of each issue included in the group registration. In addition, two complimentary subscriptions to any serial for which group registration is sought must be entered and maintained in the name of the Library of Congress, and the copies must be submitted regularly and promptly after publication.

(xviii) *Architectural works.* (A) For designs of unconstructed buildings, the deposit must consist of one complete copy of an architectural drawing or blueprint in visually perceptible form showing the overall form of the building and any interior arrangements of spaces and/or design elements in which copyright is claimed. For archival purposes, the Copyright Office prefers that the drawing submissions consist of the following in descending order of preference:

(1) Original format, or best quality form of reproduction, including offset or silk screen printing;

(2) Xerographic or photographic copies on good quality paper;

(3) Positive photostat or photodirect positive;

(4) Blue line copies (diaz or ozalid process).

The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsman(s) and the building site, if known.

(B) For designs of constructed buildings, the deposit must consist of one complete copy of an architectural drawing or blueprint in visually per-

ceptible form showing the overall form of the building and any interior arrangement of spaces and/or design elements in which copyright is claimed. In addition, the deposit must also include identifying material in the form of photographs complying with §202.21 of these regulations, which clearly discloses the architectural works being registered. For archival purposes, the Copyright Office prefers that the drawing submissions constitute the most finished form of presentation drawings and consist of the following in descending order of preference:

(1) Original format, or best quality form of reproduction, including offset or silk screen printing;

(2) Xerographic or photographic copies on good quality paper;

(3) Positive photostat or photodirect positive;

(4) Blue line copies (diaz or ozalid process).

With respect to the accompanying photographs, the Copyright Office prefers 8 x 10 inches, good quality photographs, which clearly show several exterior and interior views. The Copyright Office prefers that the deposit disclose the name(s) of the architect(s) and draftsman(s) and the building site.

(xix) *Works fixed in a CD-ROM format.*

(A) Where a work is fixed in a CD-ROM format, the deposit must consist of one complete copy of the entire CD-ROM package, including a complete copy of any accompanying operating software and instructional manual, and a printed version of the work embodied in the CD-ROM, if the work is fixed in print as well as a CD-ROM. A complete copy of a published CD-ROM package includes all of the elements comprising the applicable unit of publication, including elements that if considered separately would not be copyrightable subject matter or could be the subject of a separate registration.

(B) In any case where the work fixed in a CD-ROM package cannot be viewed on equipment available in the Examining Division of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section, in addition to the deposit of the CD-ROM package.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation:

(i) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section;

(ii) Permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or

(iii) Permit the deposit of an actual copy or copies, in lieu of the identifying material otherwise required by this section; or

(iv) Permit the deposit of identifying material which does not comply with §202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under §202.19(e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termi-

nation that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit or registration made earlier under the grant of special relief.

(e) *Use of copies and phonorecords deposited for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and §202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application.

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

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* Subject to the specific provisions of paragraphs (f) and (g) of this section, and to §§202.19(e)(1)(iv) and 202.20(d)(1)(iv), in any case where the deposit of identifying material is permitted or required under §202.19 or §202.20 of these regulations for published or unpublished works, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material should reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show the entire copyrightable content in the ordinary case, but in no case less than an adequate representation of such content, of the work for which deposit is being made, or for which registration is being sought shall be submitted. Except in cases falling under the provisions of

§ 202.21

§ 202.19(d)(2)(iii) or § 202.20(c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* Photographic transparencies must be at least 35mm in size and, if such transparencies are 3x3 inches or less, must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. The Copyright Office prefers that transparencies larger than 3x3 inches be mounted in a way that facilitates their handling and preservation, and reserves the right to require such mounting in particular cases. All types of identifying material other than photographic transparencies must be not less than 3x3 inches and not more than 9x12 inches, but preferably 8x10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be large enough to show clearly the entire copyrightable content of the work.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work; and the indication of an exact measurement of one or more dimensions of the work is preferred.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted. Such reproduction shall be no smaller than 3x3 inches and no larger than 9x12 inches, and shall show the exact appearance and content of the notice, and its specific position on the work.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy of the motion picture shall consist of:

(1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and

(2) Photographs or other reproductions from the motion picture showing

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the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any.

The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material deposited under this paragraph (f).

(g)(1) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either:

(i) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and description of the motion picture; or

(ii) A set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture.

(2) In either case the “description” may be a continuity, a pressbook, or a synopsis but in all cases it must include:

(i) The title or continuing title of the work, and the episode title, if any;

(ii) The nature and general content of the program;

(iii) The date when the work was first fixed and whether or not fixation was simultaneous with first transmission;

(iv) The date of first transmission, if any;

(v) The running time; and

(vi) The credits appearing on the work, if any.

(3) The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material submitted under this paragraph (g).

(h) In the case where the deposit copy or copies of a motion picture cannot be viewed for examining purposes on equipment in the Examining Division of the Copyright Office, the “description” required by § 202.20(c)(2)(ii) of these regulations may be a continuity, a press-book, a synopsis, or a final shooting script but in all cases must be sufficient to indicate the copyrightable material in the work and include

(1) The continuing title of the work and the episode title, if any;

(2) The nature and general content of the program and of its dialogue or narration, if any;

(3) The running time; and

(4) All credits appearing on the work including the copyright notice, if any. The provisions of paragraphs (b), (c), and (d) of this section do not apply to identifying material submitted under this paragraph (h).

[51 FR 6409, Feb. 24, 1986]

§ 202.22 Acquisition and deposit of unpublished television transmission programs.

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

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

(1) The terms *copies*, *fixed*, *publication*, and *transmission program* and their variant forms, have the meanings given to them in section 101 of title 17. The term *network station* has the meaning given it in section 111(f) of title 17.

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

(c) *Off-the-air copying.* (i) Library of Congress employees acting under the general authority of the Librarian of Congress may make a fixation of an unpublished television transmission program directly from a transmission to the public in the United States, in accordance with section 407(e)(1) and (4) of Title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress acquisition policies in effect at the time of fixation. Specific notice of an intent to copy a transmission program off-the-air will ordinarily not be given. In general, the Library of Congress will seek to copy off-the-air a substantial portion of the programming transmitted by non-commercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will copy off-the-air selected programming

transmitted by commercial broadcast stations, both network and independent.

(2) Upon written request addressed to the Chief, Motion Picture, Broadcasting and Recorded Sound Division by a broadcast station or other owner of the right of transmission, the Library of Congress will inform the requestor whether a particular transmission program has been copied off-the-air by the Library.

(3) The Library of Congress will not knowingly copy off-the-air any unfixed or published television transmission program under the copying authority of section 407(e) of title 17 of the United States Code.

(4) The Library of Congress is entitled under this paragraph (c) to presume that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of title 47 of the United States Code has been fixed but not published.

(5) The presumption established by paragraph (c)(4) of this section may be overcome by written declaration and submission of appropriate documentary evidence to the Chief, Motion Picture, Broadcasting and Recorded Sound Division, either before or after off-the-air copying of the particular transmission program by the Library of Congress. Such written submission shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement declaring either that the program was not fixed or that it was published at the time of transmission;

(iii) If it is declared that the program was published at the time of transmission, a brief statement of the facts of publication, including the date and place thereof, the method of publication, the name of the owner of the right of first publication, and whether the work was published in the United States with notice of copyright; and

(iv) The actual handwritten signature of an officer or other duly authorized agent of the organization which transmitted the program in question.

(6) A declaration that the program was unfixed at the time of transmission shall be accepted by the Library of Congress, unless the Library can cite evidence to the contrary, and the off-the-air copy will either be

- (i) Erased; or
- (ii) Retained, if requested by the owner of copyright or of any exclusive right, to satisfy the deposit provision of section 408 of title 17 of the United States Code.

(7) If it is declared that the program was published at the time of transmission, the Library of Congress is entitled under this section to retain the copy to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code.

(8) The Library of Congress in making fixations of unpublished transmission programs transmitted by commercial broadcast stations shall not do so without notifying the transmitting organization or its agent that such activity is taking place. In the case of network stations, the notification will be sent to the particular network. In the case of any other commercial broadcasting station, the notification will be sent to the particular broadcast station that has transmitted, or will transmit, the program. Such notice shall, if possible, be given by the Library of Congress prior to the time of broadcast. In every case, the Library of Congress shall transmit such notice no later than fourteen days after such fixation has occurred. Such notice shall contain:

- (i) The identification, by title and time of broadcast, of the transmission program in question;

- (ii) A brief statement asserting the Library of Congress' belief that the transmission program has been, or will be by the date of transmission, fixed and is unpublished, together with language converting the notice to a demand for deposit under section 407 (a) and (b) of title 17 of the United States Code, if the transmission program has been published in the United States.

(9) The notice required by paragraph (c)(8) of this section shall not cover more than one transmission program except that the notice may cover up to thirteen episodes of one title if such episodes are generally scheduled to be

broadcast at the same time period on a regular basis, or may cover all the episodes comprising the title if they are scheduled to be broadcast within a period of not more than two months.

(d) *Demands for deposit of a television transmission program.* (1) The Register of Copyrights may make a written demand upon the owner of the right of transmission in the United States to deposit a copy of a specific transmission program for the benefit of the Library of Congress under the authority of section 407(e)(2) of title 17 of the United States Code.

(2) The Register of Copyrights is entitled to presume, unless clear evidence to the contrary is proffered, that the transmitting organization is the owner of the United States transmission right.

(3) Notices of demand shall be in writing and shall contain:

- (i) The identification, by title and time of broadcast, of the work in question;

- (ii) An explanation of the optional forms of compliance, including transfer of ownership of a copy to the Library, lending a copy to the Library for reproduction, or selling a copy to the Library at a price not to exceed the cost of reproducing and supplying the copy;

- (iii) A ninety-day deadline by which time either compliance or a request for an extension of a request to adjust the scope of the demand or the method for fulfilling it shall have been received by the Register of Copyrights;

- (iv) A brief description of the controls which are placed on the copies' use;

- (v) A statement concerning the Register's perception of the publication status of the program, together with language converting this demand to a demand for a deposit, under 17 U.S.C. 407 (a) and (c), if the recipient takes the position that the work is published; and

- (vi) A statement that a *compliance copy* must be made and retained if the notice is received prior to transmission.

(4) With respect to paragraph (d)(3)(ii) of this section, the sale of a copy in compliance with a demand of this nature shall be at a price not to

exceed the cost to the Library of reproducing and supplying the copy. The notice of demand should therefore inform the recipient of that cost and set that cost, plus reasonable shipping charges, as the maximum price for such a sale.

(5) Copies transferred, lent, or sold under paragraph (d) of this section shall be of sound physical condition as described in Appendix A to this section.

(6) *Special relief.* In the case of any demand made under paragraph (d) of this section the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i) Extend the time period provided in subparagraph (d)(3)(iii);

(ii) Make adjustments in the scope of the demand; or

(iii) Make adjustments in the method of fulfilling the demand. Any decision as to whether to allow such extension or adjustments shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress and shall be made as reasonably warranted by the circumstances. Requests for special relief under paragraph (d) of this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of the right of transmission in the United States and shall set forth the specific reasons why the request shall be granted.

(e) *Disposition and use of copies.* (1) All copies acquired under this section shall be maintained by the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress. The Library may make one archival copy of a program which it has fixed under the provisions of section 407(e)(1) of title 17 of the United States Code and paragraph (c) of this section.

(2) All copies acquired or made under this section, except copies of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the restrictions concerning copying and access found in Library of

Congress Regulation 818-17, *Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress*, or its successors. Copies of transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are subject to the provisions of the "American Television and Radio Archives Act" (section 170 of title 2 of the United States Code) and such regulations as the Librarian of Congress shall prescribe.

(f) *Registration of claims to copyright.*

(1) Copies fixed by the Library of Congress under the provisions of paragraph (c) of this section may be used as the deposit for copyright registration provided that:

(i) The application and fee, in a form acceptable for registration, is received by the Copyright Office not later than ninety days after transmission of the program, and

(ii) Correspondence received by the Copyright Office in the envelope containing the application and fee states that a fixation of the instant work was made by the Library of Congress and requests that the copy so fixed be used to satisfy the registration deposit provisions.

(2) Copies transferred, lent, or sold to the Library of Congress under the provisions of paragraph (d) of this section may be used as the deposit for copyright registration purposes only when the application and fee, in a form acceptable for registration, accompany, in the same container, the copy lent, transferred, or sold, and there is an explanation that the copy is intended to satisfy both the demand issued under section 407(e)(2) of title 17 of the United States Code and the registration deposit provisions.

(g) *Agreements modifying the terms of this section.* (1) The Library of Congress

may, at its sole discretion, enter into an agreement whereby the provision of copies of unpublished television transmission programs on terms different from those contained in this section is authorized.

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(2) Any such agreement may be terminated without notice by the Library of Congress.

(17 U.S.C. 407, 408, 702)

[48 FR 37208, Aug. 17, 1983, as amended at 56 FR 7815, Feb. 26, 1991; 60 FR 34168, June 30, 1995]

§202.23 Full term retention of copyright deposits.

(a) *General.* (1) This section prescribes conditions under which a request for full term retention, under the control of the Copyright Office, of copyright deposits (copies, phonorecords, or identifying material) of published works may be made and granted or denied pursuant to section 704(e) of title 17 of the United States Code. Only copies, phonorecords, or identifying material deposited in connection with registration of a claim to copyright under title 17 of the United States Code are within the provisions of this section. Only the depositor or the copyright owner of record of the work identified by the copyright deposit, or a duly authorized agent of the depositor or copyright owner, may request full term retention. A fee for this service is fixed by this section pursuant to section 708(a)(11) of title 17 of the United States Code.

(2) For purposes of this section, *under the control of the Copyright Office* shall mean within the confines of Copyright Office buildings and under the control of Copyright Office employees, including retention in a Federal records center, but does not include transfer to the Library of Congress collections.

(3) For purposes of this section, *full term retention* means retention for a period of 75 years from the date of publication of the work identified by the particular copyright deposit which is retained.

(4) For purposes of this section, *copyright deposit* means the copy, phonorecord, or identifying material submitted to the Copyright Office in connection with a published work that is subsequently registered and made part of the records of the Office.

(b) *Form and content of request for full term retention*—(1) *Forms.* The Copyright Office does not provide printed forms

for the use of persons requesting full term retention of copyright deposits.

(2) Requests for full term retention must be made in writing addressed to the Chief, Information and Reference Division of the Copyright Office, and shall (i) be signed by or on behalf of the depositor or copyright owner of record, and (ii) clearly indicate that full term retention is desired.

(3) The request for full term retention must adequately identify the particular copyright deposit to be retained, preferably by including the title used in the registration application, the name of the depositor or copyright owner of record, the publication date, and, if registration was completed earlier, the registration number.

(c) *Conditions under which requests will be granted or denied*—(1) *General.* A request that meets the requirements of paragraph (b) will generally be granted if the copyright deposit for which full term retention is requested has been continuously in the custody of the Copyright Office and the Library of Congress has not, by the date of the request, selected the copyright deposit for its collections.

(2) *Time of request.* The request for full term retention of a particular copyright deposit may be made at the time of deposit or at any time thereafter; however, the request will be granted only if at least one copy, phonorecord, or set of identifying material is in the custody of the Copyright Office at the time of the request. Where the request is made concurrent with the initial deposit of the work for registration, the requestor must submit one copy or phonorecord more than the number specified in §202.20 of 37 CFR for the particular work.

(3) *One deposit retained.* The Copyright Office will retain no more than one copy, phonorecord, or set of identifying material for a given registered work.

(4) *Denial of request for full term retention.* The Copyright Office reserves the right to deny the request for full term retention where:

(i) The excessive size, fragility, or weight of the deposit would, in the sole discretion of the Register of Copyrights, constitute an unreasonable

storage burden. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit;

(ii) The Library of Congress has selected for its collections the single copyright deposit, or both, if two copies or phonorecords were deposited; or

(iii) Retention would result in a health or safety hazard, in the sole judgment of the Register of Copyrights. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit.

(d) *Form of copyright deposit.* If full term retention is granted, the Copyright Office will retain under its control the particular copyright deposit used to make registration for the work. Any deposit made on after September 19, 1978 shall satisfy the requirements of 37 CFR 202.20 and 202.21.

(e) *Fee for full term retention.* (1) Pursuant to section 708(a)(11) of title 17 of the United States Code, the Register of Copyrights has fixed the fee for full term retention, as prescribed in §201.3(d), for each copyright deposit granted full term retention.

(2) A check or money order in the amount prescribed in §201.3(d) payable to the Register of Copyrights, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full term retention has been granted for a particular copyright deposit.

(3) The Copyright Office will issue a receipt acknowledging payment of the fee and identifying the copyright deposit for which full term retention has been granted.

(f) *Selection by Library of Congress—(1) General.* All published copyright deposits are available for selection by the Library of Congress until the Copyright Office has formally granted a re-

quest for full term retention. Unless the requestor has deposited the additional copy or phonorecord specified by paragraph (c)(2) of this section, the Copyright Office will not process a request for full term retention submitted concurrent with a copyright registration application and deposit, until the Library of Congress has had a reasonable amount of time to make its selection determination.

(2) A request for full term retention made at the time of deposit of a published work does not affect the right of the Library to select one or both of the copyright deposits.

(3) If one copyright deposit is selected, the second deposit, if any, will be used for full term retention.

(4) If both copyright deposits are selected, or, in the case where the single deposit made is selected, full term retention will be granted only if the additional copy or phonorecord specified by paragraph (c)(2) was deposited.

(g) *Termination of full term storage.* Full term storage will cease 75 years after the date of publication of the work identified by the copyright deposit retained, and the copyright deposit will be disposed of in accordance with section 704, paragraphs (b) through (d), of title 17 of the United States Code.

[52 FR 28822, Aug. 4, 1987, as amended at 60 FR 34168, June 30, 1995; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999]

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

To be considered a copy "of sound physical condition" within the meaning of 37 CFR 202.22(d)(5), a copy shall conform to all the technical guidelines set out in this Appendix.

A. *Physical Condition.* All portions of the copy that reproduce the transmission program must be:

1. *Clean:* Free from dirt, marks, spots, fungus, or other smudges, blotches, blemishes, or distortions;

2. *Undamaged:* Free from burns, blisters, tears, cuts, scratches, breaks, erasure, or other physical damage. The copies must also be free from:

(i) Any damage that interferes with performance from the tape or other reproduction, including physical damage resulting from earlier mechanical difficulties such as cassette jamming, breaks, tangles, or tape overflow; and

(ii) Any erasures, damage causing visual or audible defects or distortions or any material remaining from incomplete erasure of previously recorded works.

3. *Unspliced*: Free from splices in any part of the copy reproducing the transmission program, regardless of whether the splice involves the addition or deletion of material or is intended to repair a break or cut.

4. *Undeteriorated*: Free from any visual or aural deterioration resulting from aging or exposure to climatic, atmospheric, or other chemical or physical conditions, including heat, cold, humidity, electromagnetic fields, or radiation. The copy shall also be free from excessive brittleness or stretching, from any visible flaking of oxide from the tape base or other medium, and from other visible signs of physical deterioration or excessive wear.

B. *Physical Appurtenances of Deposit Copy.*

1. *Physical Housing of Video Tape Copy.* (a) In the case of video tape reproduced for reel-to-reel performance, the deposit copy shall consist of reels of uniform size and length. The length of the reels will depend on both the size of the tape and its running time (the last reel may be shorter). (b) In the case of video tape reproduced for cassette, cartridge, or similar performance, the tape drive mechanism shall be fully operable and free from any mechanical defects.

2. *“Leader” or Equivalent.* The copy, whether housed in reels, cassettes, or cartridges, shall have a leader segment both preceding the beginning and following the end of the recording.

C. *Visual and Aural Quality of Copy.*

1. *Visual Quality.* The copy should be equivalent to an evaluated first generation copy from an edited master tape and must reproduce a flawless and consistent electronic signal that meets industry standards for television screening.

2. *Aural Quality.* The sound channels or other portions must reproduce a flawless and consistent electronic signal without any audible defects.

(17 U.S.C. 407, 408, 702)

[48 FR 37209, Aug. 17, 1983, as amended at 60 FR 34168, June 30, 1995]

APPENDIX B TO PART 202—“BEST EDITION” OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

The copyright law (title 17, United States Code) requires that copies or phonorecords deposited in the Copyright Office be of the “best edition” of the work. The law states that “The ‘best edition’ of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.” (For works first published only in a country other than the

United States, the law requires the deposit of the best edition as first published.)

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and “best edition” standards based on such differences do not apply. Each such version is a separate work for the purpose of the copyright law.

The criteria to be applied in determining the best edition of each of several types of material are listed below in descending order of importance. In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. Example: If a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper, and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial), by requesting “special relief” from the deposit requirements. All requests for special relief should be in writing and should state the reason(s) why the applicant cannot send the required deposit and what the applicant wishes to submit instead of the required deposit.

I. *Printed Textual Matter*

A. *Paper, Binding, and Packaging:*

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.
8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued. In the case of looseleaf materials, this includes the submission of all binders and indexes when they are part of the unit as published and offered for sale or distribution. Additionally, the regular and timely receipt of all appropriate looseleaf updates, supplements, and releases including supplemental

binders issued to handle these expanded versions, is part of the requirement to properly maintain these publications.

9. Slip-cased rather than nonslip-cased.
10. With protective folders rather than without (for broadsides).

11. Rolled rather than folded (for broadsides).

12. With protective coatings rather than without (except broadsides, which should not be coated).

B. Rarity:

1. Special limited edition having the greatest number of special features.

2. Other limited edition rather than trade edition.

3. Special binding rather than trade binding.

C. Illustrations:

1. Illustrated rather than unillustrated.

2. Illustrations in color rather than black and white.

D. Special Features:

1. With thumb notches or index tabs rather than without.

2. With aids to use such as overlays and magnifiers rather than without.

E. Size:

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

II. Photographs

A. Size and finish, in descending order of preference:

1. The most widely distributed edition.

2. 8 x 10-inch glossy print.

3. Other size or finish.

B. Unmounted rather than mounted.

C. Archival-quality rather than less-permanent paper stock or printing process.

III. Motion Pictures

Film medium is considered a better quality than any other medium. The formats under "film" and "video formats" are listed in descending order of preference:

A. Film

1. Preprint material with special arrangement.

2. 35mm positive prints.

3. 16mm positive prints.

B. Video Formats

1. One-inch open reel tape

2. Betacam SP

3. D-2

4. Betacam

5. Videodisc

6. Three-quarter inch cassette

7. One-half inch VHS cassette

IV. Other Graphic Matter

A. Paper and Printing:

1. Archival quality rather than less-permanent paper.

2. Color rather than black and white.

B. Size and Content:

1. Larger rather than smaller size.

2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.

C. Rarity:

1. The most widely distributed edition rather than one of limited distribution.

2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.

3. A photographic reproduction of the original, by special arrangement only.

D. Text and Other Materials:

1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.

E. Binding and Packaging:

1. Bound rather than unbound.

2. If editions have different binding, apply the criteria in I.A.2-I.A.7, above.

3. Rolled rather than folded.

4. With protective coatings rather than without.

V. Phonorecords

A. Compact digital disc rather than a vinyl disc.

B. Vinyl disc rather than tape.

C. With special enclosures rather than without.

D. Open-reel rather than cartridge.

E. Cartridge rather than cassette.

F. Quadraphonic rather than stereophonic.

G. True stereophonic rather than monaural.

H. Monaural rather than electronically rechanneled stereo.

VI. Musical Compositions

A. Fullness of Score:

1. *Vocal music*:

a. With orchestral accompaniment—

i. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

ii. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).

2. *Instrumental music*:

a. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)

b. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In

cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)

B. Printing and Paper:

1. Archival-quality rather than less-permanent paper.

C. Binding and Packaging:

1. Special limited editions rather than trade editions.

2. Bound rather than unbound.

3. If editions have different binding, apply the criteria in I.A.2-I.A.12, above.

4. With protective folders rather than without.

VII. Microforms

A. Related Materials:

1. With indexes, study guides, or other printed matter rather than without.

B. Permanence and Appearance:

1. Silver halide rather than any other emulsion.

2. Positive rather than negative.

3. Color rather than black and white.

C. Format (newspapers and newspaper-formatted serials):

1. Reel microfilm rather than any other microform.

D. Format (all other materials):

1. Microfiche rather than reel microfilm.

2. Reel microfilm rather than microform cassettes.

3. Microfilm cassettes rather than micro-opaque prints.

E. Size:

1. 35 mm rather than 16 mm.

VIII. Machine-Readable Copies

A. Computer Programs

1. With documents and other accompanying material rather than without.

2. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).

3. Format:

a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):

(i) 5¼" Diskette(s).

(ii) 3½" Diskette(s).

(iii) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

b. Apple Macintosh:

(i) 3½" Diskette(s).

(ii) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

B. Computerized Information Works, Including Statistical Compendia, Serials, or Reference Works:

1. With documentation and other accompanying material rather than without.

2. With best edition of accompanying program rather than without.

3. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).

4. Format

a. PC-DOS or MS-DOS (or other IBM compatible formats, such as XENIX):

(i) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

(ii) 5¼" Diskette(s).

(iii) 3½" Diskette(s).

b. Apple Macintosh:

(i) Optical media, such as CD-ROM—best edition should adhere to prevailing NISO standards.

(ii) 3½" Diskette(s).

IX. Works Existing in More Than One Medium

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:

1. Microform.

2. Printed matter.

B. All other materials:

1. Printed matter.

2. Microform.

3. Phonorecord.

[54 FR 42299, Oct. 16, 1989, as amended at 62 FR 51603, Oct. 2, 1997]

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

ORGANIZATION

Sec.

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203.2 Authority and functions.

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

SOURCE: 43 FR 774, Jan. 4, 1978, unless otherwise noted.

ORGANIZATION

§203.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of Title 5, United States Code, as amended.

§203.2 Authority and functions.

(a) The administration of the copyright law was entrusted to the Library of Congress by an act of Congress in 1870, and the Copyright Office has been a separate department of the Library since 1897. The statutory functions of the Copyright Office are contained in and carried out in accordance with the Copyright Act. Pub. L. 94-553 (90 Stat. 2541-2602), 17 U.S.C. 101-1101.

[43 FR 774, Jan. 4, 1978, as amended at 62 FR 35421, July 1, 1997]

§203.3 Organization.

(a) *In general.* The Office of the Register exercises overall direction of the work of the Copyright Office, including work in conjunction with copyright legislation and promulgation of copyright regulations. The Office of the Register of Copyrights includes the legal and administrative, and automation staff.

(b) The Associate Register of Copyright for Operations has oversight of the operating divisions of the Copyright Office. The operating divisions are:

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

(2) The Examining Division, which examines all applications and material presented to the Copyright Office for registration of original and renewal copyright claims, and which determines whether the materials deposited constitute copyrightable subject matter and whether the other legal and formal requirements of title 17 have been met.

(3) The Cataloging Division, which prepares the bibliographic description of all copyrighted works registered in the Copyright Office, including the recording of legal facts of copyright pertaining to each work, in an on-line database in which copyright records can be searched; and which also examines and catalogs in an on-line database documents submitted for recordation.

(4) The Information and Reference Division, which provides a national copyright information service through the Public Information Office, educates

the public on the copyright law, issues and distributes information materials, responds to reference requests regarding copyright matters, prepares search reports based upon copyright records, certifies copies of legal documents concerned with copyright, and maintains liaison with the United States Customs Service, the Department of the Treasury, and the United States Postal Service on certain matters. The Information and Reference Division also develops, services, stores, and preserves the official records and catalogs of the Copyright Office, including applications for registration, historical records, and materials deposited for copyright registration that are not selected by the Library of Congress for addition to its collections.

(5) The Licensing Division, which implements the sections of the Copyright Act dealing with secondary transmissions of radio and television programs, compulsory licenses for making and distributing phonorecords of non-dramatic musical, pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. The Licensing Division is in charge of collecting the statutory royalties and distributing these royalties based on either a voluntary agreement among the interested parties or a determination of the Copyright Arbitration Royalty Panels.

(c) The Copyright General Counsel is a principal legal officer of the Office. The General Counsel has overall supervisory responsibility for the legal staff and primary responsibility for providing liaison on legal matters between the Office and the Congress, the Department of Justice and other agencies of Government, the courts, the legal community, and a wide range of interests affected by the copyright law. The Copyright General Counsel has responsibility for overseeing all functions related to the administration of the compulsory licenses including oversight of the Copyright Arbitration Royalty Panels.

(d) The Associate Register of Copyrights for International Affairs and Policy is a principal legal adviser to the Register with primary responsibility for the international aspects of

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copyright protection, as well as legislative and policy matters.

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

(f) The Office has no field organization.

(g) The Office is located in The James Madison Memorial Building of the Library of Congress, 1st and Independence Avenue, SE., Washington, DC. 20559. The Public Information Office is located in Room LM-401. Its hours are 8:30 a.m. to 5 p.m., Monday through Friday except legal holidays. The phone number of the Public Information Office is (202) 707-3000. Informational material regarding the copyright law, the registration process, fees, and related information about the Copyright Office and its functions may be obtained free of charge from the Public Information Office upon request.

(h) All Copyright Office forms may be obtained free of charge from the Public Information Office or by calling the Copyright Office Hotline anytime day or night at (202) 707-9100.

(i) The Copyright Office maintains an "electronic reading room" by making available certain documents and records on its World Wide Web page and by providing access to documents that affect the public in electronic format pursuant to 5 USC 552(a)(2). Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including registration information and recorded documents, are available on the Internet. Frequently requested Copyright Office circulars, announcements, and recently proposed as well as final regulations are available on-line. The address for the Copyright Office's home page is: <http://www.loc.gov/copyright>; information may also be accessed by connecting to the Library of Congress' home page on the World Wide Web. The address is: <http://www.loc.gov>. Other

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Copyright Office documents may be provided on disk when so requested.

[60 FR 34168, June 30, 1995, as amended at 62 FR 55742, Oct. 28, 1997]

PROCEDURES

§ 203.4 Methods of operation.

(a) In accordance with section 552(a)(2) of the Freedom of Information Act, the Copyright Office makes available for public inspection and copying records of copyright registrations and of final refusals to register claims to copyright; statements of policy and interpretations which have been adopted but are not published in the FEDERAL REGISTER; and administrative staff manuals and instructions to the staff that affect a member of the public.

(b) The Copyright Office also maintains and makes available for public inspection and copying current indexes providing identifying information as to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552(a)(2). The Copyright Office has determined that publication of these indexes is unnecessary and impractical. Copies of the indexes will be provided to any member of the public upon request at the cost of reproduction.

(c) The material and indexes referred to in paragraphs (a) and (b) of this section are available for public inspection and copying at the Public Information Office of the Copyright Office, Room LM-401, The James Madison Memorial Building of the Library of Congress, 1st and Independence Avenue, SE., Washington, DC, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except legal holidays.

(d) The Supervisory Copyright Information Specialist is responsible for responding to all initial requests submitted under the Freedom of Information Act. Individuals desiring to obtain access to Copyright Office information under the Act should make a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day

except legal holidays at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE., Washington, DC. If a request is made by mail, both the request and the envelope carrying it should be plainly marked Freedom of Information Act Request. Failure to so mark a mailed request may delay the Office response.

(e) Records must be reasonably described. A request reasonably describes records if it enables the Office to identify the records requested by any process that is not unreasonably burdensome or disruptive of Office operations. The Supervisory Copyright Information Specialist will, upon request, aid members of the public to formulate their requests in such a manner as to enable the Office to respond effectively and reduce search costs for the requester.

(f) The Office will respond to all properly marked mailed requests and all personally delivered written requests for records within twenty (20) working days of receipt by the Supervisory Copyright Information Specialist. Inquiries should be mailed to: Copyright Office, GC/I&R, P.O. Box 70400 Southwest Station, Washington, DC 20024. If hand delivered, materials should go to: Copyright Public Information Office, LM 401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, S.E., Washington, DC Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. If it is determined that an extension of time greater than ten (10) working days is necessary to respond to a request due to unusual circumstances, as defined in paragraph (i) of this section, the Supervisory Copyright Information Specialist shall so notify the requester and give the requester the opportunity to:

(1) Limit the scope of the request so that it may be processed within twenty (20) working days, or

(2) Arrange with the Office an alternative time frame for processing the request or a modified request. If a request is denied, the written notification will include the basis for the denial, names of all individuals who participated in the determination, and procedures available to appeal the determination. If a requestor wishes to

appeal a denial of some or all of his or her request for information, he or she must make an appeal in writing within 30 calendar days of the date of the Office's denial. The request should be directed to the General Counsel of the United States Copyright Office.

(g) In the event a request is denied and that denial is appealed, the Supervisory Copyright Information Specialist will refer the appeal to the General Counsel. Appeals shall be set forth in writing and addressed to the Supervisory Copyright Information Specialist at the address listed in paragraph (d) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the General Counsel or his or her delegate within 20 working days. If, on appeal, the denial is in whole or in part upheld, the written determination will include the basis for the appeal denial and will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(h) In unusual circumstances, the General Counsel may extend the time limits prescribed in paragraphs (f) and (g) of this section for not more than 10 working days. The extension period may be split between the initial request and the appeal but the total period of extension shall not exceed 10 working days. Extensions will be by written notice to the person making the request. The Copyright Office will advise the requester of the reasons for the extension and the date the determination is expected. As used in this paragraph "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are physically separate from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or

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more components of the Copyright Office which have a substantial subject matter interest therein.

(i) The Supervisory Copyright Information Specialist will consider requests for expedited processing of requests in cases where the requester demonstrates a compelling need for such processing. The term "compelling need" means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a "compelling need" exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief. The Office will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) days of receipt of the request. If a request for expedited processing is approved, documents responsive to the request will be processed as soon as is practicable. Denials of requests for expedited processing may be appealed to the Office of the General Counsel.

[43 FR 774, Jan. 4, 1978, as amended at 47 FR 36820, Aug. 24, 1982; 62 FR 55742, Oct. 28, 1997; 63 FR 1927, Jan 13, 1998]

AVAILABILITY OF INFORMATION

§ 203.5 Inspection and copying.

(a) When a request for information has been approved, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Supervisory Copyright Information Specialist at the address or telephone number listed in § 203.4(d). Such material may be copied manually without charge, and reasonable facilities are available in the Public Information Office for that purpose. Also, copies of individual pages of such materials will be

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made available at the price per page specified in paragraphs (a) and (b) of § 203.6.

CHARGES FOR SEARCH FOR REPRODUCTION

§ 203.6 Schedule of fees and methods of payment for services rendered.

(a) *General.* The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act of 1976, title 17 of the United States Code (Pub. L. 94-553) requires a fee to be charged. The fees required to be charged are contained in § 201.3 of this chapter, or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. If the Copyright Office receives a request for copies or other services involving the public records or indexes of the Office or for copies of deposited articles for which a fee is required to be charged, the Office will notify the requester of the procedure established to obtain the copies or services and the amount of the chargeable fees. Fees pursuant to title 5 U.S.C., section 552 for all other services not involving the public records of the Copyright Office will be assessed according to the schedule in paragraph (b) of this section. All fees so assessed shall be charged to the requester, except where the charge is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requests by record subjects asking for copies of records about themselves shall be processed under the Privacy Act fee schedule found in 37 CFR 204.6.

(b) *FOIA requests.* In responding to requests under this part the following fees shall be assessed, unless a waiver or reduction in fees has been granted pursuant to paragraph (d) of this section:

(1) For copies of certificates of copyright registration, \$25.

(2) For copies of all other Copyright Office records not otherwise provided for in this section a minimum fee of \$15.00 for up to 15 pages and \$.50 per page over 15.

(3) For each hour or fraction of an hour spent in searching for a requested

record, \$65, except that no search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Fees may be assessed for time spent searching even if the search fails to locate any responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(4) For the issuance of any certification, \$65 for each hour or fraction of an hour consumed in respect thereto.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost of the Office.

(6) For computer searches of records, which may be undertaken through the use of existing programing, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no less than \$65 per hour or fraction thereof).

(7) No review fees will be charged for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may be withheld.

(c) *Fee limitations.* The following limitations on fees shall apply:

(1) Except for requesters seeking records for commercial use the following will be provided without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(2) No fees will be charged for ordinary packaging and mailing costs.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Office determines, based upon information pro-

vided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Office shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.”

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosures: Whether disclosure of the requested information will contribute to “public understanding.”

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the

requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of \$25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than \$25.00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Copyright Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregation of requests.* Where the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly.

(g) *Advance payments.* (1) Where the Office estimates that a total fee to be assessed under this section is likely to exceed \$250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Of-

fice may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (g)(2) of this section, the Office shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component of the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of billing.

[53 FR 8456, Mar. 15, 1988, as amended at 56 FR 59885, Nov. 26, 1991; 62 FR 55742, Oct. 28, 1997; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999]

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

Sec.

204.1 Purposes and scope.

204.2 Definitions.

204.3 General policy.

204.4 Procedure for notification of the existence of records pertaining to individuals.

204.5 Procedures for requesting access to records.

204.6 Fees.

204.7 Request for correction or amendment of records.

204.8 Appeal of refusal to correct or amend an individual's record.

204.9 Judicial review.

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

SOURCE: 43 FR 776, Jan. 4, 1978, unless otherwise noted.

§204.1 Purposes and scope.

The purposes of these regulations are:

(a) The establishment of procedures by which an individual can determine if the Copyright Office maintains a system of records in which there is a record pertaining to the individual; and

(b) The establishment of procedures by which an individual may gain access to a record or information maintained on that individual and have such record or information disclosed for the purpose of review, copying, correction, or amendment.

§ 204.2 Definitions.

For purposes of this part:

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use, or disseminate;

(c) The term *record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(d) The term *system of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual; and

(e) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 204.3 General policy.

The Copyright Office serves primarily as an office of public record. Section 705 of title 17, United States Code, requires the Copyright Office to open for public inspection all records of copyright deposits, registrations, recordations, and other actions taken under title 17. Therefore, a routine use of all Copyright Office systems of records created under section 705 of title 17 is disclosure to the public. All Copyright Office systems of records created under section 705 of title 17 are also available for public copying as re-

quired by section 706(a), with the exception of copyright deposits, whose reproduction is governed by section 706(b) and the regulations issued under that section. In addition to the records mandated by section 705 of title 17, the Copyright Office maintains other systems of records which are necessary for the Office effectively to carry out its mission. These systems of records are routinely consulted and otherwise used by Copyright Office employees in the performance of their duties. The Copyright Office will not sell, rent, or otherwise make publicly available any mailing list prepared by the Office.

[47 FR 36821, Aug. 24, 1982]

§ 204.4 Procedure for notification of the existence of records pertaining to individuals.

(a) The Copyright Office will publish in the FEDERAL REGISTER, upon the establishment or revision of the system of records, notices of all Copyright Office systems of records subject to the Privacy Act, as provided by 5 U.S.C., section 552a(e)(4). Individuals desiring to know if a Copyright Office system of records contains a record pertaining to them should submit a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day except legal holidays at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE., Washington, DC.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the FEDERAL REGISTER. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within ten working days of receipt and will notify the requester within 30 working days of

receipt of the existence or non-existence of records pertaining to the requester.

(d) Since all Copyright Office Records created under section 705 of title 17 are open to public inspection, no identity verification is necessary for individuals who wish to know whether a system of records created under section 705 pertains to them.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 50 FR 697, Aug. 14, 1985; 60 FR 34169, June 30, 1995]

§204.5 Procedures for requesting access to records.

(a) Individuals desiring to obtain access to Copyright Office information pertaining to them in a system of records other than those created under section 705 of title 17 should make a written request, signed by themselves or their duly authorized agent, to that effect either by mail to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE., Washington, DC.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the FEDERAL REGISTER. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within ten working days of receipt; and will notify the requester within 30 working days of receipt when and where access to the record will be granted. If the individual requested a copy of the record, the copy will accompany such notification.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 60 FR 34169, June 30, 1995]

§204.6 Fees.

(a) The Copyright Office will provide, free of charge, one copy to an indi-

vidual of any record pertaining to that individual contained in a Copyright Office system of records, except where the request is for a copy of a record for which a specific fee is required and identified in §201.3 of this chapter, in which case that fee shall be charged. For additional copies of records not covered by section 708 the fee will be a minimum of \$15.00 for up to 15 pages and \$.50 per page over 15. The Office will require prepayment of fees estimated to exceed \$25.00 and will remit any excess paid or bill an additional amount according to the differences between the final fee charged and the amount prepaid. When prepayment is required, a request is not deemed "received" until prepayment has been made.

(b) The Copyright Office may waive the fee requirement whenever it determines that such waiver would be in the public interest.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 56 FR 59886, Nov. 26, 1991; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999]

§204.7 Request for correction or amendment of records.

(a) Any individual may request the correction or amendment of a record pertaining to her or him. With respect to an error in a copyright registration, the procedure for correction and fee chargeable is governed by section 408(d) of title 17 of the United States Code, and the regulations issued as authorized by that section. With respect to an error in any other record, the request shall be in writing and delivered either by mail addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559, or in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays, at Room LM-401, The James Madison Memorial Building, 1st and Independence Avenue, SE., Washington, DC. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to an error in a copyright registration, the time limit

for Office response to requests for correction is governed by section 408(d) of Pub. L. 94-553, and the regulations issued as authorized by that section. With respect to other requests for correction or amendment of records, the Office will respond within 10 working days indicating to the requester that the requested correction or amendment has been made or that it has been refused. If the requested correction or amendment is refused, the Office response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

[43 FR 776, Jan. 4, 1978, as amended at 47 FR 36821, Aug. 24, 1982; 60 FR 34169, June 30, 1995]

§ 204.8 Appeal of refusal to correct or amend an individual's record.

(a) An individual has 90 calendar days from receipt of the Copyright Office's response to appeal the refusal to correct or amend a record pertaining to the individual. The individual should submit a written appeal to the Register of Copyright, Copyright Office, Library of Congress, Washington, DC 20559 for the final administrative determination. Appeals, and the envelopes carrying them, should be plainly marked "Privacy Act Appeal". Failure to so mark the appeal may delay the Register's response. An appeal should contain a copy of the request for amendment or correction and a copy of the record alleged to be untimely, inaccurate, incomplete or irrelevant.

(b) The Register will issue a written decision granting or denying the appeal within 30 working days after receipt of the appeal unless, after showing good cause, the Register extends the 30 day period. If the appeal is granted, the requested amendment or correction will be made promptly. If the appeal is denied, in whole or part, the Register's decision will set forth reasons for the denial. Additionally, the decision will advise the requester that he or she has the right to file with the Copyright Office a concise statement of his or her reasons for disagreeing with the refusal to amend the record and that such statement will be attached to the requester's record and included in any future disclosure of such record.

§ 204.9 Judicial review.

Within two years of the receipt of a final adverse administrative determination, an individual may seek judicial review of that determination as provided in 5 U.S.C. 552a(g)(1).

PART 211—MASK WORK PROTECTION

Sec.

211.1 General provisions.

211.2 Recordation of documents pertaining to mask works.

211.3 Mask work fees.

211.4 Registration of claims of protection in mask works.

211.5 Deposit of identifying material.

211.6 Methods of affixation and placement of mask work notice.

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

SOURCE: 50 FR 26719, June 28, 1985, unless otherwise noted.

§ 211.1 General provisions.

(a) Mail and other communications with the Copyright Office concerning the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620, chapter 9 of title 17 U.S.C., shall be addressed to: Library of Congress, Department MW, Washington, DC 20540.

(b) Section 201.2 of this chapter relating to the information given by the Copyright Office, and parts 203 and 204 of this chapter pertaining to the Freedom of Information Act and Privacy Act, shall apply, where appropriate, to the administration by the Copyright Office of the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620.

(c) For purposes of this part, the terms *semiconductor chip product*, *mask work*, *fixed*, *commercially exploited*, and *owner*, shall have the meanings set forth in section 901 of title 17 U.S.C.

§ 211.2 Recordation of documents pertaining to mask works.

The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to mask works under section 903 of Title 17 U.S.C.

§ 211.3 Mask work fees.

(a) Section 201.3 of this chapter prescribes the fees or charges established by the Register of Copyrights for services relating to mask works.

(b) Section 201.6 of this chapter on the payment and refund of Copyright Office fees shall apply to mask work fees.

[50 FR 26719, June 28, 1985, as amended at 56 FR 59886, Nov. 26, 1991; 59 FR 38372, July 28, 1994; 63 FR 29139, May 28, 1998; 64 FR 29522, June 1, 1999]

§ 211.4 Registration of claims of protection in mask works.

(a) *General.* This section prescribes conditions for the registration of claims of protection in mask works pursuant to section 908 of Title 17 U.S.C.

(b) *Application for registration.* (1) For purposes of registration of mask work claims, the Register of Copyrights has designated "Form MW" to be used for all applications submitted on and after January 7, 1985. Copies of the form are available free upon request to the Public Information Office, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Applications submitted before January 7, 1985 will be dated January 7, 1985.

(2) An application for registration of a mask work claim may be submitted by the owner of the mask work, or the duly authorized agent of any such owner.

(i) The owner of a mask work includes a party that has obtained the transfer of all of the exclusive rights in the work, but does not include the transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights.

(ii) For purposes of eligibility to claim mask work protection pursuant to section 902(a)(1)(A) of 17 U.S.C., the owner of the mask work must be either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Act.

(3) An application for registration shall be submitted on Form MW prescribed by the Register under paragraph (b)(1) of this section, and shall be accompanied by the registration fee and deposit required under 17 U.S.C. 908 and §§ 211.3 and 211.5 of these regula-

tions. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(i) A declaration that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge; and

(ii) The handwritten signature of the applicant, accompanied by the typed or printed name of that person.

(c) *One registration per mask work.* (1) Subject to the exception specified in paragraph (c)(2) of this section, only one registration can generally be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(2) Notwithstanding the general rule permitting only one registration per work, owners of mask works in final forms of semiconductor chip products that are produced by adding metal-connection layers to unpersonalized gate arrays may separately register the entire unpersonalized gate array and the custom metallization layers. Applicants seeking to register separately entire unpersonalized gate arrays or custom metallization layers should make the nature of their claim clear at Space 8 of application Form MW. For these purposes, an "unpersonalized gate array" is an intermediate form chip product that includes a plurality of circuit elements that are adaptable to be personalized into a plurality of different final form chip products, in which some of the circuit elements are, or will be, connected as gates.

(d) *Registration as a single work.* Subject to the exception specified in paragraph (c)(2) of this section, for purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single work.

(1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed

in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and

(2) In the case of a mask work that has been commercially exploited. All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask is or are the same.

(e) *Registration in most complete form.* Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 of Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession. For applicants seeking to register an unpersonalized gate array or custom metallization layers under paragraph (c)(2), the most complete form is the entire chip on which the unpersonalized gate array or custom metallization layers reside(s), and registration covers those elements of the chip in which work protection is asserted.

(f) *Section 914 Orders.* (1) For purposes of this section, the terms *Commissioner* and *Order* shall have the meaning given them in the *Guidelines for the Submission of Applications for Interim Protection of Mask Works Under 17 U.S.C. 914* (49 FR 44517; Nov. 7, 1984) as follows:

(i) *Commissioner* means the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

(ii) *Order* means an action by the Commissioner issuing or terminating an Order extending to foreign nationals, domiciliaries and sovereign authorities the privilege of making interim registrations for mask works pursuant to Chapter 9 of title 17, U.S.C.

(2) In the case of a mask work which is eligible for registration only after

issuance of an Order of the Commissioner pursuant to section 914, 17 U.S.C., applications for registration under section 908 may be submitted, along with the proper identifying material and fee, if a request for issuance of an Order has been made in accordance with the *Guidelines*. The Copyright Office will process and examine the claims, but will not issue a certificate of registration unless and until an Order is issued pursuant to 17 U.S.C. 914.

(3) The effective date of any registration premised on a section 914, 17 U.S.C. Order shall not be earlier than the effective date of the Order.

(4) Registration premised on a section 914, 17 U.S.C. Order will be refused unless the Order is given an effective date before, and the proper application, deposit of identifying material, and fee are received in the Copyright Office before:

(i) July 1, 1985, in the case of mask works first commercially exploited between July 1, 1983, and November 8, 1984; or

(ii) The expiration of two years following first commercial exploitation, in the case of a mask work commercially exploited on or after November 8, 1984.

(5) Subject to paragraph (e)(4) of this section, registration of a claim premised on a section 914, 17 U.S.C. Order will be made even after the termination or expiration of an Order, provided that a proper application, deposit of identifying material, and fee are received in the Copyright Office while the Order is in effect, and the claim is otherwise entitled to registration under chapter 9 of title 17 U.S.C.

(g) *Corrections and amplifications of prior registration.* Except for errors or omissions made by the Copyright Office, no corrections or amplifications can be made to the information contained in the record of a completed registration after the effective date of the registration. A document purporting to correct or amplify the information in a completed registration may be recorded in the Copyright Office for whatever effect a court of competent jurisdiction may later give to it, if the document is signed by the owner of the

mask work, as identified in the registration record, or by a duly authorized agent of the owner.

[50 FR 26719, June 28, 1985, as amended at 56 FR 7818, Feb. 26, 1991]

§ 211.5 Deposit of identifying material.

(a) *General.* This section prescribes rules pertaining to the deposit of identifying material for registration of a claim of protection in a mask work under section 908 of title 17 U.S.C.

(b) *Nature of required deposit.* Subject to the provisions of paragraph (c) of this section, the deposit of identifying material to accompany an application for registration of a mask work claim under § 211.4 of these regulations shall consist of:

(1) In the case of a commercially exploited mask work, four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited. Defective chips may be deposited under this section provided that the mask work contribution would be revealed in reverse dissection of the chips. The four reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of:

(i) Sets of plastic color overlay sheets;

(ii) Drawings or plots in composite form on a single sheet or on separate sheets; or

(iii) A photograph of each layer of the work fixed in a semiconductor chip product.

The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8½ x 11 inch format, and shall be reproduced at a magnification sufficient to reveal the basic circuitry design of the mask work and which shall in all cases be at least 20 times magnification.

(2) In the case of a mask work that has not been commercially exploited, one of the following:

(i) Where the mask work contribution in which registration is sought represents twenty percent or more of the area of the intended final form, a visually perceptible representation of the work in accordance with paragraph (b)(1) (i) or (ii) of this section. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor product.

(ii) Where the mask work contribution in which registration is sought represents less than twenty percent of the area of the intended final form, a visually perceptible representation of the work which reveals the totality of the mask work contribution to a person trained in the state of the art. The visually perceptible representations may consist of any combination of plastic color overlay sheets, drawing or plots in composite form, or a photograph or photographs of the entire mask set. If the visually perceptible representation fails to identify all of the elements of the mask work contribution, they may be accompanied by additional explanatory material. The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8½ x 11 inch format and shall be of sufficient magnification and completeness to reveal all elements of the mask work contribution. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor chip product.

(c) *Trade secret protection.* Where specific layers of a mask work fixed in a semiconductor chip product contain information in which trade secret protection is asserted, certain material may be withheld as follows:

(1) *Mask works commercially exploited.* For commercially exploited mask works no more than two layers of each five or more layers in the work. In lieu of the visually perceptible representations required under paragraph (b)(1) of this section, identifying portions of the withheld material must be submitted. For these purposes, *identifying portions* shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or (ii) visually perceptible representations in accordance with paragraph (b)(1) (i), (ii), or (iii) of this

section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out.

(2) *Mask work not commercially exploited.* For mask works not commercially exploited falling under paragraph (b)(2)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(2) of this section, “identifying portions” shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, in which sensitive information maintained under a claim of trade secrecy has been blocked out or stripped, or (ii) visually perceptible representations in accordance with paragraph (b)(2)(i) with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out. The identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product in which the sensitive information maintained under a claim of trade secrecy has been blocked out, provided that the blocked out portions do not exceed the remaining portions.

(d) *Special relief.* The Register of Copyrights may decide to grant special relief from the deposit requirements of this section, and shall determine the conditions under which special relief is to be granted. Requests for special relief under this paragraph shall be made in writing to the Chief, Examining Division of the Copyright Office, Washington, DC 20559, shall be signed by the person signing the application for registration, shall set forth specific reasons why the request should be granted and shall propose an alternative form of deposit.

(e) *Retention and disposition of deposits.* (1) Any identifying material deposited under this section, including material deposited in connection with claims that have been refused registration, are the property of the United States Government.

(2) Where a claim of protection in a mask work is registered in the Copyright Office, the identifying material deposited in connection with the claim shall be retained under the control of the Copyright Office, including retention in Government storage facilities, during the period of protection. After that period, it is within the joint discretion of the Register of Copyrights and the Librarian of Congress to order its destruction or other disposition.

[50 FR 26719, June 28, 1985, as amended at 60 FR 34169, June 30, 1995]

§ 211.6 Methods of affixation and placement of mask work notice.

(a) *General.* (1) This section specifies methods of affixation and placement of the mask work notice that will satisfy the notice requirement in section 909 of title 17 U.S.C. A notice deemed “acceptable” under this regulation shall be considered to satisfy the requirement of that section that it be affixed “in such manner and location as to give reasonable notice” of protection. As provided in that section, the examples specified in this regulation shall not be considered exhaustive of the methods of affixation and positions giving reasonable notice of the claim of protection in a mask work.

(2) The acceptability of a mask work notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination.

(b) *Elements of mask work notice.* The elements of a mask work notice shall consist of:

(1) The words *mask work*, the symbol “M” or the symbol “Ⓜ” (the letter M in a circle); and

(2) The name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(c) *Methods of affixation and placement of the notice.* In the case of a mask work fixed in a semiconductor chip

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product, the following locations are acceptable:

(1) A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle for the product; or

(2) A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.

[50 FR 26719, June 28, 1985, as amended at 60 FR 34169, June 30, 1995]

SUBCHAPTER B—COPYRIGHT ARBITRATION ROYALTY PANEL RULES AND PROCEDURES

EDITORIAL NOTE: For nomenclature changes to subchapter B, see 58 FR 67691, Dec. 22, 1993, 59 FR 23993, 23994, and 23995, May 9, 1994, as corrected at 59 FR 33201 and 33202, June 28, 1994.

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

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

SOURCE: 59 FR 23981, May 9, 1994, unless otherwise noted.

Subpart A—Organization

§251.1 Official addresses.

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

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Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024

or, hand-delivered to:

Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20540

[61 FR 63717, Dec. 2, 1996]

§251.2 Purpose of Copyright Arbitration Royalty Panels.

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

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

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

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

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

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

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

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

(h) To make determinations concerning the distribution of cable and satellite carrier royalty fees and digital audio recording devices and media payments deposited with the Register

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of Copyrights, 17 U.S.C. 111, 119, and chapter 10, respectively.

[61 FR 37215, July 17, 1996, as amended at 63 FR 65556, Nov. 27, 1998]

§251.3 Arbitrator lists.

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

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

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

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

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

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

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

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

make available for copying and inspection the information provided under paragraph (a) of this section.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

§251.4 Arbitrator lists: Objections.

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

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 45-day period specified in §251.45(b)(1)(i), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

§251.5 Qualifications of the arbitrators.

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

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

(b) Ten or more years of legal practice.

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

[59 FR 23981, May 9, 1994, as amended at 61 FR 63717, Dec. 2, 1996]

§251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the FEDERAL REGISTER initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two

arbitrators from the arbitrator list for that calendar year.

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

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

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

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

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

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum.

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If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under §251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

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

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

§251.7 Actions of Copyright Arbitration Royalty Panels.

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

§251.8 Suspension of proceedings.

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

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from the time and point at which it was suspended.

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

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

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§251.11 Open meetings.

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

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

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

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

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a

recorded vote of the panel and included in the announcement.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

§251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to be present does not include the right to participate or make comments.

§251.13 Closed meetings.

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

- (a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or
- (b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or
- (c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or
- (d) If the matter involves privileged or confidential trade secrets or financial information; or
- (e) If the result might be to accuse any person of a crime or formally censure him or her; or
- (f) If there would be a clearly unwarranted invasion of personal privacy; or
- (g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:
- (1) Interfere with enforcement proceedings; or

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

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

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

(5) Disclose investigative techniques and procedures; or

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§251.14 Procedure for closed meetings.

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

(b) Before a discussion to close a meeting or withhold information, the

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chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under §251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

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

- (1) The vote of each arbitrator; and
- (2) The appropriate exemption under §251.13; and
- (3) A list of all persons expected to attend the meeting and their affiliation.

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

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

§251.15 Transcripts of closed meetings.

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

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

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§251.16 Requests to open or close meetings.

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

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

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

Subpart C—Public Access to and Inspection of Records

§251.21 Public records.

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

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

- (1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;
- (2) Records exempted by statute from disclosure;

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

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

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

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

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

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

§ 251.22 Public access.

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

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

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

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

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright

Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

§ 251.23 FOIA and Privacy Act.

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

Subpart D—Standards of Conduct

§ 251.30 Basic obligations of arbitrators.

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

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

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

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

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

(2) Arbitrators shall not hold financial interests that conflict with the

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conscientious performance of their service.

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

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

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

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

§251.31 Financial interests.

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

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

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

(b) "Direct or indirect financial interest" shall include: Being employed by, being a consultant to, being a rep-

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resentative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

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

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

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

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

(1) The arbitrator's spouse;

(2) The arbitrator's minor child;

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994]

§251.32 Financial disclosure statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

§251.33 Ex parte communications.

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

(b) *Selected arbitrators.* No interested person shall engage in, or cause someone else to engage in, *ex parte* communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian. Incidental communications unrelated to any proceeding, such as an exchange

of pleasantries, shall not be deemed to constitute an *ex parte* communication.

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

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

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

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

- (i) All such written or recorded communications;
- (ii) Memoranda stating the substance of all such oral communications; and
- (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

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

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of

this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63040, 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§251.34 Gifts and other things of monetary value.

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

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

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

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

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

(1) Given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or

dependent relative because of that person's relationship to the arbitrator, or

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

§251.35 Outside employment and other activities.

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

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

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

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

(b) Honoraria indirectly paid include payments—

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

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

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

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

case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

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

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

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

§251.37 Use of nonpublic information.

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

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

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

(2) Draft interlocutory rulings or draft decisions; or

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

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

§251.38 Billing and commitment to standards.

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

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

§251.39 Remedies.

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

(a) In the case of a selected arbitrator,

(1) Removal of the arbitrator from the proceeding;

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

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

(b) In the case of a listed but not selected arbitrator—

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

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

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

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

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

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

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

Subpart E—Procedures of Copyright Arbitration Royalty Panels

§251.40 Scope.

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

§251.41 Formal hearings.

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§ 251.42 Suspension or waiver of rules.

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

§ 251.43 Written cases.

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

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

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

§ 251.44 Filing and service of written cases and pleadings.

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

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

(c) *English language translations.* In all filings with a CARP or the Librarian of Congress, each submission that

is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

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

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

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

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

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

copy of such notification on all parties and the CARP.

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

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996]

§ 251.45 Discovery and prehearing motions.

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

(b) *Precontroversy discovery, filing of written cases, scheduling.* (1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and

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

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

(2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under §251.41(b) and objections to arbitrators appearing on the arbitrator list under §251.4. Re-

sponses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

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

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

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996]

§251.46 Conduct of hearings: Role of arbitrators.

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

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

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

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

(2) Administering oaths and affirmations to all witnesses;

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

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

(5) Announcing the schedule of subsequent hearings.

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

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

§251.47 Conduct of hearings: Witnesses and counsel.

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

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

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

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

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

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

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

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

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

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this

subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 63 FR 30635, June 5, 1998]

§ 251.48 Rules of evidence.

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

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information

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

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

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

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and

the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

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

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

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

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

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

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

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

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

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

(ii) The standard error for each component;

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

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

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 63 FR 30635, June 5, 1998]

§ 251.49 Transcript and record.

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

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

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

§ 251.50 Rulings and orders.

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

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995]

§ 251.51 Closing the record.

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

except upon ten days' notice to all parties.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§251.52 Proposed findings and conclusions.

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

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

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

(d) Proposed conclusions shall be stated separately.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§251.53 Report to the Librarian of Congress.

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

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

tified and signed by the arbitrator so dissenting.

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

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

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§251.54 Assessment of costs of arbitration panels.

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

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

(2) In the case of a distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution. These costs shall be considered reasonable costs incurred by the Librarian of Congress and the Copyright Office. Such costs shall be deducted from the royalty fees which have been deposited and collected under title 17 of the United States Code and which are the subject of the distribution proceeding.

(b) Each arbitrator shall itemize his or her expenses on the statement of cost in a format approved by the General Counsel and shall specify the name and address to whom payment should be made. In the case of a rate adjustment proceeding, each statement of cost shall specify each party's share of the total cost and the amount owed by that party to each arbitrator, or alternatively, reflect the method of payment agreed upon by the parties and the arbitrators.

(c) The statements of cost shall be sent to the Library of Congress no more frequently than once a month.

(1) In the case of a distribution proceeding, the statements of cost shall be sent to the Accounting Operations Section, Financial Services Directorate, Library of Congress, 101 Independence

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Avenue, SE, Washington, DC 20540-9112, and a copy of the statements of cost shall be submitted to the Copyright Office as directed in paragraph (c)(2) of this section.

(2) In the case of a rate adjustment proceeding, the statements of cost shall be sent to the CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024, or hand delivered to the Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20540.

(d) In the case of a rate adjustment proceeding, all parties to the proceeding shall have 30 days from receipt of a proper statement of cost in which to tender payment to the arbitrators, unless otherwise directed by the panel. Payment should be in the form of a money order, check, bank draft, or electronic fund transfer.

(e) In the case of a distribution proceeding, the Library of Congress shall reimburse the arbitrators directly from the royalty fees collected under title 17 of the United States Code which are the subject of the CARP proceeding. Payment of approved costs shall be made within 30 days of the receipt of a proper statement of cost in the form of an electronic fund transfer in accordance with the regulations of the Library of Congress.

[64 FR 25201, May 11, 1999]

§ 251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

§ 251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see § 251.55, but within 60 days from receipt of the report of the deter-

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mination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the order shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the FEDERAL REGISTER.

§ 251.57 Effective date of order.

An order of determination issued by the Librarian under § 251.56 shall become effective 30 days following its publication in the FEDERAL REGISTER, unless an appeal has been filed pursuant to § 251.58 and notice of the appeal has been served on all parties to the proceeding.

§ 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under § 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the FEDERAL REGISTER.

(b) If no appeal is brought within the 30 day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 112, 114, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees by those sections.

[59 FR 23981, May 9, 1994, as amended at 61 FR 37215, July 17, 1996; 63 FR 65556, Nov. 27, 1998]

Subpart F—Rate Adjustment Proceedings

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), the making of ephemeral recordings (17 U.S.C. 112), certain digital audio transmissions (17 U.S.C. 114), the manufacture and distribution of phonorecords, including digital phonorecord deliveries (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), noncommercial educational broadcasting (17 U.S.C. 118) and satellite carriers (17 U.S.C. 119). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 37215, July 17, 1996; 63 FR 30635, June 5, 1998; 63 FR 65556, Nov. 27, 1998]

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) *Cable*: During 1995, and each subsequent fifth calendar year.

(2) *Ephemeral recordings*: During a 60-day period prescribed by the Librarian in 1999, 2000, and at 2-year intervals thereafter, or as otherwise agreed to by the parties.

(3) *Digital audio transmissions*: For preexisting digital subscription transmission services and preexisting satellite digital audio radio services:

(i) During a 60-day period commencing on July 1, 2001 and at 5-year intervals thereafter, or

(ii) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of subscription digital audio transmission service; and for an eligi-

ble nonsubscription service or a new subscription service:

(A) During a 60-day period prescribed by the Librarian in 1999,

(B) During a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter,

(C) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of eligible nonsubscription service or new subscription service, or

(D) As otherwise agreed to by the parties.

(4) *Phonorecords*: During 1997 and each subsequent tenth calendar year.

(5) *Digital phonorecord deliveries*: During 1997 and each subsequent fifth calendar year, or as otherwise agreed to by the parties.

(6) *Coin-operated phonorecord players (jukeboxes)*: Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the FEDERAL REGISTER on June 30, 1997, and at five year intervals thereafter.

(d) In the case of the satellite carrier compulsory license, rate adjustment proceedings shall commence on January 1, 1997, in accordance with 17 U.S.C. 119(c)(3)(A), for satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with 17 U.S.C. 119(c)(2).

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 37215, July 17, 1996; 63 FR 65556, Nov. 27, 1998]

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable, ephemeral recordings, certain digital

audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

[59 FR 23981, May 9, 1994, as amended at 61 FR 37216, July 17, 1996; 63 FR 65557, Nov. 27, 1998]

§ 251.63 Consideration of petition; settlements.

(a) To allow time for the parties to settle their differences concerning cable, phonorecord, and jukebox rate adjustments, the Librarian of Congress shall, after the filing of the petition under § 251.62 and before the 45-day period specified in § 251.45(b)(2)(i), designate a 30-day period for negotiation of a settlement. The Librarian shall cause notice of the dates for that period to be published in the FEDERAL REGISTER.

(b) In the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

[59 FR 63042, Dec. 7, 1994, as amended at 61 FR 37216, July 17, 1996; 61 FR 63718, Dec. 2, 1996]

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

After the end of the 45-day precontroversy discovery period, and after the Librarian has ruled on all motions and objections filed under § 251.45, the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the FEDERAL REGISTER a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting and the satellite carrier compulsory license in accordance with 17 U.S.C. 118 and 119, respectively.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994]

§ 251.65 Deduction of costs of rate adjustment proceedings.

In accordance with 17 U.S.C. 802(h)(1), the Librarian of Congress and the Register of Copyrights may assess the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the rate adjustment proceedings directly to the parties participating in the proceedings.

[59 FR 63042, Dec. 7, 1994]

Subpart G—Royalty Fee Distribution Proceedings

§ 251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable (17 U.S.C. 111), satellite carrier (17 U.S.C. 119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.71 Commencement of proceedings.

(a) *Cable*. In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers*. In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media*. In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

§ 251.72 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the FEDERAL REGISTER a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

[59 FR 23981, May 9, 1994. Redesignated at 59 FR 63042, Dec. 7, 1994]

§ 251.73 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribu-

tion proceeding, from the relevant royalty pool.

[59 FR 23981, May 9, 1994. Redesignated at 59 FR 63042, Dec. 7, 1994]

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.

252.1 Scope.

252.2 Time of filing.

252.3 Content of claims.

252.4 Compliance with statutory dates.

252.5 Copies of claims.

AUTHORITY: 17 U.S.C. 111(d)(4), 801, 803.

SOURCE: 59 FR 23992, May 9, 1994, unless otherwise noted.

§ 252.1 Scope.

This part prescribes procedures under 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

[59 FR 23992, May 9, 1994, as amended at 60 FR 8198, Feb. 13, 1995]

§ 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 252.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to cable compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint

claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim.

(4) For individual claims, a general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a cable system of such works establishing a basis for the claim. For joint claims, a general statement of the nature of the joint claimants' copyrighted works and identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a cable system establishing a basis for the joint claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

[59 FR 23992, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994]

§ 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540, during normal business hours during the month of July; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a July date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

[59 FR 23992, May 9, 1994, as amended at 59 FR 63042, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

§ 252.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to cable royalty fees.

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

253.1 General.

253.2 Definition of public broadcasting entity.

253.3 Performance of musical compositions in the repertory of ASCAP and BMI by PBS and NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

- 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.
- 253.6 Performance of musical compositions by other public broadcasting entities.
- 253.7 Recording rights, rates and terms.
- 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.
- 253.9 Unknown copyright owners.
- 253.10 Cost of living adjustment.
- 253.11 Notice of restrictions on use of reproductions of transmission programs.

AUTHORITY: 17 U.S.C. 118, 801(b)(1) and 803.

SOURCE: 57 FR 60954, Dec. 22, 1992, unless otherwise noted. Redesignated at 59 FR 23993, May 9, 1994.

§253.1 General.

This part 253 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1998, and ending on December 31, 2002. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

[57 FR 60954, Dec. 22, 1992. Redesignated at 59 FR 23993, May 9, 1994, as amended at 63 FR 2144, Jan 14, 1998]

§253.2 Definition of public broadcasting entity.

As used in this part, the term *public broadcasting entity* means a non-commercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d)(2).

§253.3 Performance of musical compositions in the repertory of ASCAP and BMI by PBS and NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

(a) *Scope.* This section shall apply to the performance during a period beginning January 1, 1998, and ending on December 31, 2002, by the Public Broadcasting Service (PBS), National Public Radio (NPR) and other public broadcasting entities (as defined in §253.2) engaged in the activities set forth in 17 U.S.C. 118(d) of copyrighted published

nondramatic musical compositions in the repertory of the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), except for public broadcasting entities covered by §§253.5 and 253.6.

(b) *Royalty rates.* The following annual royalty rates shall apply to the performance of published nondramatic musical compositions within the scope of this section: \$3,320,000 to ASCAP, and \$2,123,000 to BMI.

(c) *Payment of royalties.* The royalty payments specified in paragraph (b) of this section shall be made in two equal payments on July 31 and December 31 of each calendar year, except for 1998, in which year the royalty payments shall also be made in two equal installments, the first of which shall be made within thirty (30) days from the date the Librarian of Congress renders his decision in *In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License*, Docket No. 96-6 CARP NCBRA, and the second of which shall be made on December 31, 1998, subject to 17 U.S.C. 802(g).

(d) *Identification of stations.* PBS, NPR and/or the Corporation for Public Broadcasting (CPB) shall annually for the years 1999-2002, by not later than January 31 of each such calendar year, and in 1998, within thirty (30) days of the date the Librarian of Congress renders the decision in *In the Matter of Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License*, Docket No. 96-6 CARP NCBRA, furnish to ASCAP and BMI a complete list of all public broadcasting entities within the scope of this section, as of January 1 of that calendar year. Such lists shall include:

(1) A list of all public broadcasting entities operating as television broadcast stations that are associated with PBS ("PBS Stations"), and the PBS licensee with which each PBS Station is associated ("PBS Licensees"), identifying which PBS Licensees are Single Feed Licensees and which are Multiple Feed Licensees, and which PBS Stations or groups of stations are Independently Programmed Stations, as those terms are defined in paragraph (e)(2) of this section;

(2) A list of all public broadcasting entities operating as television broadcast stations that are not associated with PBS ("Non-PBS Stations");

(3) A list of all public broadcasting entities operating as radio broadcast stations that are associated with NPR ("NPR Stations"), which list shall designate which NPR Stations have six (6) or more full-time employees and which NPR Stations repeat one hundred (100) percent of the programming of another NPR Station; and

(4) A list of all public broadcasting entities operating as radio broadcast stations that are not associated with NPR ("Non-NPR Stations"), which list shall designate which Non-NPR Stations have six (6) or more full-time employees.

(5) For purposes of this section, Non-PBS Stations and Non-NPR Stations shall include, but not be limited to, public broadcasting entities operating as television and radio broadcast stations which receive or are eligible to receive general operational support from CPB pursuant to the Public Broadcasting Act of 1967, as amended.

(e) *Records of use.* (1) PBS and NPR shall maintain and, within thirty-one (31) days after the end of each calendar quarter, furnish to ASCAP and BMI copies of their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs during the preceding quarter (including to the extent such information is reasonably obtainable by PBS and NPR the title, author, publisher, type of use, and manner of performance thereof). PBS and NPR will make a good faith effort to obtain the information to be listed on such cue sheets. In addition, to the extent the information is reasonably obtainable, PBS shall furnish to ASCAP and BMI the PBS programming feed schedules including, but not limited to, the PBS National Programming Service schedule. PBS and NPR shall make a good faith expeditious effort to provide the data discussed in this paragraph in electronic format where possible.

(2) PBS Licensees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by a particular PBS

Station owned by such PBS Licensee showing the title, author, and publisher of each composition, to the extent such information is reasonably obtainable; provided, however, that PBS Licensees shall not be responsible for providing cue sheets for programs for which cue sheets have already been provided by PBS to ASCAP and BMI. PBS Licensees will make a good faith effort to obtain the information to be listed on such music use reports. In the case where a PBS Licensee operates only one (1) or more PBS Stations each of which broadcasts simultaneously or on a delayed basis all or at least eighty-five (85) percent of the same programming (a "Single Feed Licensee"), that Single Feed Licensee will not be obligated to furnish music use reports to either ASCAP or to BMI for more than one of its PBS Stations in each calendar year. In the case where a PBS Licensee operates two (2) or more PBS Stations which do not broadcast all or at least eighty-five (85) percent of the same programming on a simultaneous or delayed basis (a "Multiple Feed Licensee"), that Multiple Feed Licensee may be required to furnish a music use report for each PBS Station or group of stations which broadcasts less than eighty-five (85) percent of the same programming as that aired by any other PBS Station or group of stations operated by that Multiple Feed Licensee (such station or group of stations being referred to as an "Independently Programmed Station") in each calendar year. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from PBS Licensees covering a total number of PBS Stations equal to no more than fifty (50) percent of the total of the number of PBS Single Feed Licensees plus the number of Independently Programmed Stations operated by Multiple Feed Licensees; provided, however, that ASCAP and BMI shall be entitled to receive music use reports covering not less than ninety (90) PBS Stations in any given calendar year. Subject to the limitations set forth above, PBS Stations shall be obligated to furnish to ASCAP and BMI such music use reports for each station for a period of no more than seven days in each calendar year.

(3) Non-PBS Stations shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such Non-PBS Stations showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable. Non-PBS Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of Non-PBS Stations. Subject to the limitations set forth above, Non-PBS Stations shall be obligated to furnish to ASCAP and BMI such music use reports for each station for a period of no more than seven days in each calendar year.

(4) NPR Stations which have six (6) or more full-time employees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such NPR Station showing the title, author or publisher of each composition, to the extent such information is reasonably obtainable; provided, however, that NPR Stations shall not be responsible for providing cue sheets for programs for which cue sheets have already been provided by NPR to ASCAP and BMI. NPR Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of NPR Stations which have six (6) or more full-time employees. Notwithstanding the foregoing, if the number of NPR Stations with six (6) or more employees (from which ASCAP and BMI shall initially designate and request reports) falls below twenty-five (25) percent of the total number of all NPR Stations, then ASCAP and BMI may each request reports from additional NPR Stations, regardless of the number of employees, so that ASCAP and BMI shall each be entitled to receive music use reports from not less than twenty-five (25) percent of all NPR Stations. NPR Stations shall be obligated to furnish

music use reports for each station for a period of up to one week in each calendar year to ASCAP and BMI.

(5) Non-NPR Stations which have six (6) or more full-time employees shall furnish to ASCAP and BMI, upon request and designation of ASCAP and BMI, music use reports listing all musical compositions broadcast by such Non-NPR Station showing the title, author and publisher of each composition, to the extent such information is reasonably obtainable. Non-NPR Stations will make a good faith effort to obtain the information to be listed on such music use reports. In each calendar year, ASCAP and BMI shall each be limited to requesting music use reports from no more than fifty (50) percent of the Non-NPR Stations which have six (6) or more full-time employees. Notwithstanding the foregoing, if the number of Non-NPR Stations with six (6) or more employees (from which ASCAP and BMI shall initially designate and request reports) falls below twenty-five (25) percent of the total number of all Non-NPR Stations, then ASCAP and BMI may each request reports from additional Non-NPR Stations, regardless of the number of employees, so that ASCAP and BMI shall each be entitled to receive music use reports from not less than twenty-five (25) percent of all Non-NPR Stations. Non-NPR Stations shall be obligated to furnish music use reports for each station for a period of up to one week in each calendar year to ASCAP and BMI.

[63 FR 49836, Sept. 18, 1998]

§253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements, or compositions in the repertories of ASCAP, BMI or SESAC which are licensed on terms

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and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(a) *Determination of royalty rate.* (1) For the performance of such a work in a feature presentation of PBS:

1998–2002\$211.53

(2) For the performance of such a work as background or theme music in a PBS program:

1998–2002\$53.59

(3) For the performance of such a work in a feature presentation of a station of PBS:

1998–2002\$18.08

(4) For the performance of such a work as background or theme music in a program of a station of PBS:

1998–2002\$3.81

(5) For the performance of such a work in a feature presentation of NPR:

1998–2002\$21.44

(6) For the performance of such a work as background or theme music in an NPR program:

1998–2002\$5.20

(7) For the performance of such a work in a feature presentation of a station of NPR:

1998–2002\$1.52

(8) For the performance of such work as background or theme music in a program of a station of NPR:

1998–2002\$5.54

(9) For the purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that

calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP or BMI covering the license period January 1, 1998, to December 31, 2002, to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of three years following the first performance.

[57 FR 60954, Dec. 22, 1992. Redesignated and amended at 59 FR 23993, May 9, 1994; 63 FR 2144, Jan 14, 1998]

§253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, \$225 annually.

(2) For all such compositions in the repertory of BMI, \$225 annually.

(3) For all such compositions in the repertory of SESAC, \$61 annually.

(4) For the performance of any other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

[57 FR 60954, Dec. 22, 1992, as amended at 58 FR 63294, Dec. 1, 1993; 60 FR 61655, Dec. 1, 1995; 61 FR 60613, Nov. 29, 1996; 63 FR 2145, Jan. 14, 1998; 63 FR 66042, Dec. 1, 1998]

§ 253.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 1998, \$375; in 1999, \$390; in 2000, \$405; in 2001, \$420; in 2002, \$440.

(2) For all such compositions in the repertory of BMI, in 1998, \$375; in 1999, \$390; in 2000, \$405; in 2001, \$420; in 2002, \$440.

(3) For all such compositions in the repertory of SESAC, in 1998, \$78; in 1999, \$82; in 2000, \$86; in 2001, \$89; in 2002, \$92.

(4) For the performance of any other such compositions, in 1998 through 2002, \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 5 stations to furnish such reports.

[57 FR 60954, Dec. 22, 1992. Redesignated at 59 FR 23993, May 9, 1994, and amended at 60 FR 8198, Feb. 13, 1995; 63 FR 2145, Jan. 14, 1998]

§ 253.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public

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broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	1998–2002
Feature	\$106.04
Concert feature (per minute)	31.84
Background	53.59
Theme:	
Single program or first series program	53.59
Other series program	21.75

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	1998–2002
Feature	\$8.76
Concert feature (per minute)	2.30
Background	3.81
Theme:	
Single program or first series program	3.81
Other series program	1.52

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	1998–2002
Feature	\$11.48
Concert feature (per half hour) ...	16.85
Background	5.75
Theme:	

Single program or first series program	5.75
Other series program	2.29

(3) For the purposes of this schedule, a “Concert Feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in a NPR-produced radio program:

	1998–2002
Feature	\$.74
Feature (concert)(per half hour)	1.54
Background37

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates.* The required royalty rates shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) Maintenance of cue sheets. PBS and its stations, NPR, or other television public broadcasting entities shall maintain and make available for examination pursuant to subsection (e) copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Office. Deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Office copies of their standard music cue sheets or summaries of same (which may be in the form of hard copy of computerized reports) listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Office upon its request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

[57 FR 60954, Dec. 22, 1992; 58 FR 7051, Feb. 4, 1993; 58 FR 8820, Feb. 17, 1993, as amended at 63 FR 2145, Jan. 14, 1998; 63 FR 30635, 30636, June 5, 1998]

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

(A) For a featured display of a work.
1998-2002\$64.78]

(B) For background and montage display.
1998-2002.....\$31.59

(C) For use of a work for program identification or for thematic use.
1998-2002\$127.71

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule.
1998-2002.....\$41.95

(ii) For such uses in other than PBS-distributed programs:

(A) For featured display of a work.
1998-2002.....\$41.95

(B) For background and montage display.
1998-2002.....\$21.51

(C) For use of a work for program identification or for thematic use.
1998-2002.....\$85.76

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.
1998-2002.....\$21.51

For the purposes of this schedule the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than

full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a “background or montage display”.

(3) “Thematic use” is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(4) “Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced” means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Office.* (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Office copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was

taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: Second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118 (f), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

[58 FR 60954, Dec. 22, 1992; 58 FR 7051, Feb. 4, 1993. Redesignated and amended at 59 FR 23993, May 9, 1994; 63 FR 2145, Jan. 14, 1998]

§253.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Office,

upon request, information concerning fees deposited in trust funds.

[57 FR 60954, Dec. 22, 1992. Redesignated and amended at 59 FR 23993, May 9, 1994]

§ 253.10 Cost of living adjustment.

(a) On December 1, 1998, the Librarian of Congress shall publish in the FEDERAL REGISTER a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1997, to the most recent Index published prior to December 1, 1998. On each December 1 thereafter the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Librarian of Congress shall publish in the FEDERAL REGISTER a revised schedule of rates for § 253.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 253.5 shall become effective thirty days after publication in the FEDERAL REGISTER.

[57 FR 60954, Dec. 22, 1992. Redesignated and amended at 59 FR 23993, May 9, 1994; 59 FR 63042, Dec. 7, 1994; 63 FR 2145, Jan. 14, 1998]

§ 253.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a fail-

ure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

PART 254—ADJUSTMENT OF ROYALTY RATE FOR COIN-OPERATED PHONORECORD PLAYERS

Sec.

254.1 General.

254.2 Definition of coin-operated phonorecord player.

254.3 Compulsory license fees for coin-operated phonorecord players.

AUTHORITY: 17 U.S.C. 116, 801(b)(1).

§ 254.1 General.

This part 254 establishes the compulsory license fees for coin-operated phonorecord players beginning on January 1, 1982, in accordance with the provisions of 17 U.S.C. 116.

[45 FR 890, Jan. 5, 1981. Redesignated and amended at 59 FR 23993, May 9, 1994]

§ 254.2 Definition of coin-operated phonorecord player.

As used in this part, the term *coin-operated phonorecord player* is a machine or device that:

(a) Is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

(b) Is located in an establishment making no direct or indirect charge for admission;

(c) Is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(d) Affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

[60 FR 8198, Feb. 13, 1995]

§ 254.3 Compulsory license fees for coin-operated phonorecord players.

(a) Commencing January 1, 1982, the annual compulsory license fee for a

coin-operated phonorecord player shall be \$25.

(b) Commencing January 1, 1984, the annual compulsory license fee for a coin-operated phonorecord player shall be \$50.

(c) Commencing January 1, 1987, the annual compulsory license fee for a coin-operated phonorecord player shall be \$63.

(d) If performances are made available on a particular coin-operated phonorecord player for the first time after July 1 of any year, the compulsory license fee for the remainder of that year shall be one half of the annual rate of (a), (b), or (c) of this section, whichever is applicable.

(e) Commencing January 1, 1990, the annual compulsory license fee for a coin-operated phonorecord player is suspended through December 31, 1999, or until such earlier or later time as the March 1990 license agreement between AMOA and ASCAP/BMI/SESAC is terminated.

[51 FR 27537, Aug. 1, 1986, as amended at 55 FR 28197, July 10, 1990. Redesignated at 59 FR 23993, May 9, 1994]

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

Sec.

255.1 General.

255.2 Royalty payable under compulsory license.

255.3 Adjustment of royalty rate.

255.4 Definition of digital phonorecord delivery.

255.5 Royalty rate for digital phonorecord deliveries in general.

255.6 Royalty rate for incidental digital phonorecord deliveries.

255.7 Future proceedings.

255.8 Public performances of sound recordings and musical works.

AUTHORITY: 17 U.S.C. 801(b)(1) and 803.

§255.1 General.

This part 255 adjusts the rates of royalties payable under the compulsory license for making and distributing phonorecords, including digital phonorecord deliveries, embodying nondra-

matic musical works, under 17 U.S.C. 115.

[60 FR 61657, Dec. 1, 1995]

§255.2 Royalty payable under compulsory license.

With respect to each work embodied in the phonorecord, the royalty payable shall be either four cents, or three-quarters of one cent per minute of playing time or fraction thereof, whichever amount is larger, for every phonorecord made and distributed on or after July 1, 1981, subject to adjustment pursuant to §255.3.

[46 FR 891, Jan. 5, 1981, as amended at 46 FR 62268, Dec. 23, 1981. Redesignated and amended at 59 FR 23993, May 9, 1994]

§255.3 Adjustment of royalty rate.

(a) For every phonorecord made and distributed on or after January 1, 1983, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.25 cents, or 0.8 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (b) through (m) of this section.

(b) For every phonorecord made and distributed on or after July 1, 1984, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.5 cents, or 0.85 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (c) through (m) of this section.

(c) For every phonorecord made and distributed on or after January 1, 1986, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.0 cents, or 0.95 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (d) through (m) of this section.

(d) For every phonorecord made and distributed on or after January 1, 1988, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.25 cents, or 1.0 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment

pursuant to paragraphs (e) through (m) of this section.

(e) For every phonorecord made and distributed on or after January 1, 1990, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.7 cents, or 1.1 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (f) through (m) of this section.

(f) For every phonorecord made and distributed on or after January 1, 1992, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.25 cents, or 1.2 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (g) through (m) of this section.

(g) For every phonorecord made and distributed on or after January 1, 1994, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.6 cents, or 1.25 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (h) through (m) of this section.

(h) For every phonorecord made and distributed on or after January 1, 1996, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (i) through (m) of this section.

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is

larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

[60 FR 55459, Nov. 1, 1995, as amended at 63 FR 7289, Feb. 13, 1998]

§255.4 Definition of digital phonorecord delivery.

A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

[60 FR 61657, Dec. 1, 1995]

§ 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the “Physical Rate”). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

[64 FR 6223, Feb. 9, 1999]

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment

proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

[64 FR 6223, Feb. 9, 1999]

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

[64 FR 6223, Feb. 9, 1999]

§ 255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

[64 FR 6223, Feb. 9, 1999]

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

Sec.

256.1 General.

256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

AUTHORITY: 17 U.S.C. 702, 802.

§ 256.1 General.

This part establishes adjusted terms and rates for royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

[47 FR 52159, Nov. 19, 1982. Redesignated at 59 FR 23993, May 9, 1994, and amended at 60 FR 8198, Feb. 13, 1995]

§ 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) Commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. 111(d)(1)(B) shall be as follows:

(1) .893 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fees, if any, payable pursuant to paragraphs (a) (2) through (4) and (c);

(2) .893 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .563 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .265 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the first semiannual accounting period of 1985 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C. 111(d)(1)(C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total \$146,000 or less, gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which \$146,000 exceeds such actual gross re-

ceipts, except that in no case shall a cable system's gross receipts be reduced to less than \$5,600. The royalty fee payable under this paragraph shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by the subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$146,000 but less than \$292,000, the royalty fee payable under this paragraph shall be:

(i) 0.5 of 1 per centum of any gross receipts up to \$146,000 and

(ii) 1 per centum of any gross receipts in excess of \$146,000 but less than \$292,000, regardless of the number of distant signal equivalents, if any.

(c) Notwithstanding paragraphs (a) and (d) of this section, commencing with the first accounting period of 1983 and for each semiannual accounting period thereafter, for each distant signal equivalent or fraction thereof not represented by the carriage of:

(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

(2) A signal of the same type (that is, independent, network, or non-commercial educational) substituted for such permitted signal, or

(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981;

the royalty rate shall be, in lieu of the royalty rates specified in paragraphs (a) (2) through (4) and (d) of this section, 3.75 per centum of the gross receipts of the cable systems for each distant signal equivalent; any fraction of a distant signal equivalent shall be computed at its fractional value.

(d) Commencing with the first semiannual accounting period of 1990 and for each semiannual accounting period thereafter, in the case of a cable system located outside the 35-mile specified zone of a commercial VHF station

that places a predicted Grade B contour, in whole or in part, over the cable system, and that is not significantly viewed or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981, for each distant signal equivalent or fraction thereof represented by the carriage of such commercial VHF station, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section,

(1) For cable systems located wholly or in part within a top 50 television market,

(i) .599 per centum of such gross receipts for the first distant signal equivalent;

(ii) .377 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .178 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(2) For cable systems located wholly or in part within a second 50 television market,

(i) .300 per centum of such gross receipts for the first distant signal equivalent;

(ii) .189 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) .089 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(3) For purposes of this section *top 50 television markets* and "second 50 television markets" shall be defined as the comparable terms are defined or interpreted in accordance with 47 CFR 76.51, as effective June 24, 1981.

[47 FR 52159, Nov. 19, 1982, as amended at 50 FR 18481, May 1, 1985; 54 FR 12619, Mar. 28, 1989; 55 FR 33613, Aug. 16, 1990; 56 FR 12122, Mar. 22, 1991. Redesignated at 59 FR 23993, May 9, 1994, as amended at 63 FR 30636, June 5, 1998; 63 FR 39739, July 24, 1998]

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.

257.1 General.

257.2 Time of filing.

257.3 Content of claims.

257.4 Compliance with statutory dates.

257.5 Copies of claims.

257.6 Separate claims required.

AUTHORITY: 17 U.S.C. 119(b)(4).

SOURCE: 59 FR 23993, May 9, 1994, unless otherwise noted.

§257.1 General.

This part prescribes the procedures under 17 U.S.C. 119(b)(4) whereby parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Office.

§257.2 Time of filing.

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§257.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to satellite carrier compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization of the filing of the joint claim, and the name of each claimant to the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, or to list the name of each of its members or affiliates in the joint claim.

(4) For individual claims, a general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a satellite carrier of such works establishing a basis for the claim. For joint claims, a general statement of the nature of the joint claimants' copyrighted works and identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a satellite carrier establishing a basis for the joint claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

[59 FR 23993, May 9, 1994, as amended at 59 FR 63043, Dec. 7, 1994]

§257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540, during normal business hours during the month of July; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with

sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a July date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

[59 FR 23993, May 9, 1994, as amended at 59 FR 63043, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996; 63 FR 30636, June 5, 1998]

§257.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to satellite carrier royalty fees.

§257.6 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Office. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

Sec.

258.1 General.

258.2 Definition of syndex-proof signal.

258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

AUTHORITY: 17 U.S.C. 702, 802.

§ 258.1

§ 258.1 General.

This part 258 adjusts the rates of royalties payable under the compulsory license for the secondary transmission of broadcast stations under 17 U.S.C. 119.

[57 FR 19053, May 1, 1992. Redesignated and amended at 59 FR 23994, May 9, 1994; 63 FR 30636, June 5, 1998]

§ 258.2 Definition of syndex-proof signal.

A satellite retransmission of a broadcast signal shall be deemed "syndex-proof" for purposes of § 258.3(b) if, during any semiannual reporting period, the retransmission does not include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission.

[57 FR 19053, May 1, 1992. Redesignated and amended at 59 FR 23994, May 9, 1994]

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

(a) Commencing May 1, 1992, the royalty rate for the secondary transmission of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 17.5 cents per subscriber per month for superstations.

(2) 14 cents per subscriber per month for superstations whose signals are syndex-proof, as defined in § 258.2.

(3) 6 cents per subscriber per month for network stations and noncommercial educational stations.

(b) Commencing January 1, 1998, the royalty fee for secondary transmission of broadcast stations for private home viewing by satellite carriers shall be as follows:

(1) 27 cents per subscriber per month for distant superstations.

(2) 27 cents per subscriber per month for distant network stations.

(3) No royalty rate (zero) for a superstation secondarily transmitted within the station's local market, as defined in 17 U.S.C. 119(d)(11).

(4) No royalty rate (zero) for a network station secondarily transmitted within the station's local market, as defined in 17 U.S.C. 119(d)(11), to sub-

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scribers residing in unserved households, as defined in 17 U.S.C. 119(d)(10).

[62 FR 55759, Oct. 28, 1997]

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

Sec.

259.1 General.

259.2 Time of filing.

259.3 Content of claims.

259.4 Content of notices regarding independent administrators.

259.5 Compliance with statutory dates.

259.6 Copies of claims.

AUTHORITY: 17 U.S.C. 1007(a)(1).

SOURCE: 58 FR 53826, Oct. 18, 1993, unless otherwise noted. Redesignated at 59 FR 23994, May 9, 1994.

§ 259.1 General.

This part prescribes procedures pursuant to 17 U.S.C. 1007(a)(1), whereby interested copyright parties, as defined in 17 U.S.C. 1001(7), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media pursuant to 17 U.S.C. 1006, shall file claims with the Copyright Office.

[58 FR 53826, Oct. 18, 1993. Redesignated and amended at 59 FR 23994, May 9, 1994; 59 FR 33202, June 28, 1994; 60 FR 8198, Feb. 13, 1995]

§ 259.2 Time of filing.

(a) *General.* During January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Office. Claimants may file claims jointly or as a single claim.

(b) *Consequences of an untimely filing.* No royalty payments for the previous calendar year shall be distributed to any interested copyright party who has not filed a claim to such royalty payments during January or February of the following calendar year.

(c) *Authorization.* Any organization or association, acting as a common agent,

shall be required to obtain from its members or affiliates separate, specific, and written authorization, signed by members, affiliates, or their representatives, to file claims to the Musical Works Fund or the Sound Recordings Fund, apart from their standard agreements, for purposes of royalties filing and fee distribution. Such written authorization, however, will not be required for claimants to the Musical Works Fund where either:

(1) The agreement between the organization or association and its members or affiliates specifically authorizes such entity to represent its members or affiliates before the Copyright Office and/or the Copyright Arbitration Royalty Panels in royalty filing and fee distribution proceedings; or

(2) The agreement between the organization or association and its members or affiliates, as specified in a court order issued by a court with authority to interpret the terms of the contract, authorizes such entity to represent its members or affiliates before the Copyright Office and/or Copyright Arbitration Royalty Panels in royalty filing and fee distribution proceedings.

[60 FR 61660, Dec. 1, 1995, as amended at 61 FR 63718, Dec. 2, 1996]

§ 259.3 Content of claims.

(a) Claims filed by interested copyright parties for digital audio recording devices and media royalty payments shall include the following information:

(1) The full legal name of the person or entity claiming royalty payments.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) A statement as to how the claimant fits within the definition of interested copyright party specified in 17 U.S.C. 1001(7).

(4) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in 17 U.S.C. 1006(b) and as to which Subfund of the Sound Recordings Fund (i.e., the copyright owners or featured recording artists Subfund) or the Musical Works Fund (i.e., the music publishers or writers

Subfund) the claim is being made against as set forth in 17 U.S.C. 1006(b)(1)–(2).

(5) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under title 17 of the United States Code that has been distributed (as that term is defined in 17 U.S.C. 1001(6)), and that, during the period to which the royalty payments claimed pertain, has been (i) Distributed (as that term is defined in 17 U.S.C. 1001(6) in the form of digital musical recordings or analog musical recordings, or (ii) Disseminated to the public in transmissions.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) If the claim is a joint claim, it shall include a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim.

(e) If an interested copyright party intends to file claims against more than one Subfund, each such claim must be filed separately with the Copyright Office. Any claim that purports to file against more than one subfund will be rejected.

[58 FR 53826, Oct. 18, 1993. Redesignated and amended at 59 FR 23994, May 9, 1994; 59 FR 33202, June 28, 1994; 59 FR 63043, Dec. 7, 1994; 60 FR 8198, 8199, Feb. 13, 1995]

§ 259.4 Content of notices regarding independent administrators.

(a) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001 (7)(A), and the American Federation of Musicians (or any successor entity) for the purpose of managing, and ultimately distributing the

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royalty payments to nonfeatured musicians as defined in 17 U.S.C. 1006(b)(1), shall file a notice informing the Copyright Office of his/her name and address.

(b) The independent administrator jointly appointed by the interested copyright parties, as defined in 17 U.S.C. 1001(7)(A), and the American Federation of Television and Radio Artists (or any successor entity) for the purpose of managing, and ultimately distributing the royalty payments to nonfeatured vocalists as defined in 17 U.S.C. 1006(b)(1), shall file a notice informing the Copyright Office of his/her full name and address.

(c) A notice filed under paragraph (a) or (b) of this section shall include the following information:

(1) The full name of the independent administrator;

(2) The telephone number and facsimile number, if any, full address, including a specific number and street name or rural route, of the place of business of the independent administrator.

(d) Notice shall bear the original signature of the independent administrator or a duly authorized representative of the independent administrator, and shall be filed with the Copyright Office no later than March 31 of each year, commencing with March 31, 1994.

(e) No notice may be filed by facsimile transmission.

[58 FR 53826, Oct. 18, 1993. Redesignated and amended at 59 FR 23994, 23995, May 9, 1994; 59 FR 33202, June 28, 1994; 60 FR 8198, Feb. 13, 1995]

§ 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue SE., Washington, DC 20540, during normal business hours during the month of January or February; or

(2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington,

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DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which the last day of February falls on Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after the last day of February, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a January or February date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

[59 FR 23995, May 9, 1994, as amended at 59 FR 63043, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996; 63 FR 30636, June 5, 1998]

§ 259.6 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to digital audio recording devices and media royalty payments.

[59 FR 23995, May 9, 1994]

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

Sec.

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260.3 Terms for making payment of royalty fees.

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AUTHORITY: 17 U.S.C. 114, 801(b)(1).

SOURCE: 63 FR 25413, May 8, 1998, unless otherwise noted.

§ 260.1 General.

(a) This part 260 establishes terms and rates of royalty payments for the public performance of sound recordings by nonexempt subscription digital transmission services in accordance with the provisions of 17 U.S.C. 114 and 801(b)(1).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, a nonexempt subscription digital transmission service may engage in the activities set forth in 17 U.S.C. 114.

§ 260.2 Royalty fees for the digital performance of sound recordings.

(a) Commencing June 1, 1998, the royalty fee for the digital performance of sound recordings by nonexempt subscription digital services shall be 6.5% of gross revenues resulting from residential services in the United States.

(b) A nonexempt subscription digital transmission service (the "Licensee") shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(c)(1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors if any, less advertising agency commissions not to exceed 15% of those fees incurred to recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the Programming Service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise or anything or service of value is received by licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the Programming Service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (c)(1) (i) through (vii) of this section.

(2) Gross revenues shall include such payments as are in paragraphs (c)(1) (i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (c)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(d) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 260.3 Terms for making payment of royalty fees.

(a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(b) Payment shall be made on the twentieth day after the end of each month for that month, commencing

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with the month succeeding the month in which the royalty fees are set.

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct reasonable costs incurred in the administration of the distribution of the royalties, so long as the reasonable costs do not exceed the actual costs incurred by the collecting entity.

(e) Commencing June 1, 1998, and until such time as a new designation is made, the Recording Industry Association of America, Inc. shall be the agent receiving royalty payments and statements of account.

[63 FR 25413, May 8, 1998, as amended at 63 FR 30636, June 5, 1998]

§ 260.4 Confidential information and statements of account.

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt subscription digital transmission service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt subscription digital transmission service and an interested party, or between one or more interested parties; *Provided* that all such information shall be made available, for the verification proceedings provided for in §§ 260.5 and 260.6 of this part.

(b) Nonexempt subscription digital transmission services shall submit monthly statements of account on a form provided by the agent designated to collect such forms and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees of the designated agent who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing their assigned duties during the ordinary course of business, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(e) The designated agent shall implement procedures to safeguard all confidential financial and business information, including but not limited to royalty payments, submitted as part of the statements of account. Confidential information shall be maintained in locked files.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

§ 260.5 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single

audit of a nonexempt subscription digital transmission service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Office, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the entity designated by the copyright arbitration royalty panel in 37 CFR 260.3 to receive and to distribute the royalty fees.

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress

under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), or their designated agents.

§ 260.7 Unknown copyright owners.

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the

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date of payment. No claim to such payment shall be valid after the expiration of the three year period. After the expiration of this period, the collecting

agent may use the unclaimed funds to offset the cost of the administration of the collection and distribution of the royalty fees.

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¹CARP is the acronym for Copyright Arbitration Royalty Panel.

² *But see* 17 U.S.C. 121 (reproduction for blind or other people with disabilities), added by the Act of September 16, 1996, Pub. L. 104-197, 110 Stat. 2394, 2416.

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³NAFTA is the acronym for North American Free Trade Agreement.

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CHAPTER IV—ASSISTANT SECRETARY FOR TECHNOLOGY POLICY, DEPARTMENT OF COMMERCE

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**PART 401—RIGHTS TO INVENTIONS
MADE BY NONPROFIT ORGANI-
ZATIONS AND SMALL BUSINESS
FIRMS UNDER GOVERNMENT
GRANTS, CONTRACTS, AND CO-
OPERATIVE AGREEMENTS**

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AUTHORITY: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary of Commerce for Technology Policy at sec. 3(g) of DOO 10-18.

SOURCE: 52 FR 8554, Mar. 18, 1987, unless otherwise noted.

§401.1 Scope.

(a) Traditionally there have been no conditions imposed by the government on research performers while using private facilities which would preclude them from accepting research funding from other sources to expand, to aid in completing or to conduct separate investigations closely related to research activities sponsored by the government. Notwithstanding the right of research organizations to accept supplemental funding from other sources for the purpose of expediting or more comprehensively accomplishing the research objectives of the government sponsored project, it is clear that the ownership provisions of these regulations would remain applicable in any invention “conceived or first actually reduced to practice in performance” of the project. Separate accounting for the two funds used to support the

project in this case is not a determining factor.

(1) To the extent that a non-government sponsor established a project which, although closely related, falls outside the planned and committed activities of a government-funded project and does not diminish or distract from the performance of such activities, inventions made in performance of the non-government sponsored project would not be subject to the conditions of these regulations. An example of such related but separate projects would be a government sponsored project having research objectives to expand scientific understanding in a field and a closely related industry sponsored project having as its objectives the application of such new knowledge to develop usable new technology. The time relationship in conducting the two projects and the use of new fundamental knowledge from one in the performance of the other are not important determinants since most inventions rest on a knowledge base built up by numerous independent research efforts extending over many years. Should such an invention be claimed by the performing organization to be the product of non-government sponsored research and be challenged by the sponsoring agency as being reportable to the government as a “subject invention”, the challenge is appealable as described in §401.11(d).

(2) An invention which is made outside of the research activities of a government-funded project is not viewed as a “subject invention” since it cannot be shown to have been “conceived or first actually reduced to practice” in performance of the project. An obvious example of this is a situation where an instrument purchased with government funds is later used, without interference with or cost to the government-funded project, in making an invention all expenses of which involve only non-government funds.

(b) This part implements 35 U.S.C. 202 through 204 and is applicable to all Federal agencies. It applies to all funding agreements with small business firms and nonprofit organizations executed after the effective date of this part, except for a funding agreement

made primarily for educational purposes. Certain sections also provide guidance for the administration of funding agreements which predate the effective date of this part. In accordance with 35 U.S.C. 212, no scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.

(c) The *march-in* and appeals procedures in §§ 401.6 and 401.11 shall apply to any march-in or appeal proceeding under a funding agreement subject to Chapter 18 of Title 35, U.S.C., initiated after the effective date of this part even if the funding agreement was executed prior to that date.

(d) At the request of the contractor, a funding agreement for the operation of a government-owned facility which is in effect on the effective date of this part shall be promptly amended to include the provisions required by §§ 401.3(a) unless the agency determines that one of the exceptions at 35 U.S.C. 202(a)(i) through (iv) § 401.3(a)(8) through (iv) of this part is applicable and will be applied. If the exception at § 401.3(a)(iv) is determined to be applicable, the funding agreement will be promptly amended to include the provisions required by § 401.3(c).

(e) This regulation supersedes OMB Circular A-124 and shall take precedence over any regulations dealing with ownership of inventions made by small businesses and nonprofit organizations which are inconsistent with it. This regulation will be followed by all agencies pending amendment of agency regulations to conform to this part and amended Chapter 18 of Title 35. Only deviations requested by a contractor and not inconsistent with Chapter 18 of Title 35, United States Code, may be made without approval of the Secretary. Modifications or tailoring of clauses as authorized by § 401.5 or § 401.3, when alternative provisions are used under § 401.3(a)(1) through (4), are not considered deviations requiring the Secretary's approval. Three copies of proposed and final agency regulations supplementing this part shall be submitted to the Secretary at the office

set out in § 401.16 for approval for consistency with this part before they are submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291 or, if no submission is required to be made to OMB, before their submission to the FEDERAL REGISTER for publication.

(f) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with this part or earlier Office of Federal Procurement Policy regulations (OMB Circular A-124 or OMB Bulletin 81-22), the agency shall take appropriate action to ensure that small business firms or nonprofit organizations that are subcontractors under any such agreements and that received their subcontracts after July 1, 1981, receive rights in their subject inventions that are consistent with Chapter 18 and this part.

(g) This part is not intended to apply to arrangements under which nonprofit organizations, small business firms, or others are allowed to use government-owned research facilities and normal technical assistance provided to users of those facilities, whether on a reimbursable or nonreimbursable basis. This part is also not intended to apply to arrangements under which sponsors reimburse the government or facility contractor for the contractor employee's time in performing work for the sponsor. Such arrangements are not considered "funding agreements" as defined at 35 U.S.C. 201(b) and § 401.2(a) of this part.

§ 401.2 Definitions.

As used in this part—

(a) The term *funding agreement* means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

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(b) The term *contractor* means any person, small business firm or nonprofit organization which is a party to a funding agreement.

(c) The term *invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(d) The term *subject invention* means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement; provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(e) The term *practical application* means to manufacture in the case of a composition of product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(f) The term *made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(g) The term *small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this part, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.5 will be used.

(h) The term *nonprofit organization* means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified

under a state nonprofit organization statute.

(i) The term *Chapter 18* means Chapter 18 of Title 35 of the United States Code.

(j) The term *Secretary* means the Assistant Secretary of Commerce for Technology Policy.

(k) The term *electronically filed* means any submission of information transmitted by an electronic or optical-electronic system.

(l) The term *electronic or optical-electronic system* means a software-based system approved by the agency for the transmission of information.

(m) The term *patent application* or “application for patent” includes a provisional or nonprovisional U.S. national application for patent as defined in 37 CFR 1.9 (a)(2) and (a)(3), respectively, or an application for patent in a foreign country or in an international patent office.

(n) The term *initial patent application* means a nonprovisional U.S. national application for patent as defined in 37 CFR 1.9(a)(3).

[52 FR 8554, Mar. 18, 1987, as amended at 60 FR 41812, Aug. 14, 1995]

§ 401.3 Use of the standard clauses at § 401.14.

(a) Each funding agreement awarded to a small business firm or nonprofit organization (except those subject to 35 U.S.C. 212) shall contain the clause found in § 401.14(a) with such modifications and tailoring as authorized or required elsewhere in this part. However, a funding agreement may contain alternative provisions—

(1) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government; or

(2) In exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of Title 35 of the United States Code; or

(3) When it is determined by a government authority which is authorized

by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security to such activities; or

(4) When the funding agreement includes the operation of the government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs.

(b) When an agency exercises the exceptions at §401.3(a)(2) or (3), it shall use the standard clause at §401.14(a) with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. For example, if the justification relates to a particular field of use or market, the clause might be modified along lines similar to those described in §401.14(b). In any event, the clause should provide the contractor with an opportunity to receive greater rights in accordance with the procedures at §401.15. When an agency justifies and exercises the exception at §401.3(a)(2) and uses an alternative provision in the funding agreement on the basis of national security, the provision shall provide the contractor with the right to elect ownership to any invention made under such funding agreement as provided by the Standard Patent Rights Clause found at §401.14(a) if the invention is not classified by the agency within six months of the date it is reported to the agency, or within the same time period the Department of Energy does not, as authorized by regulation, law or Executive order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph.

(c) When the Department of Energy exercises the exception at §401.3(a)(4), it shall use the clause prescribed at §401.14(b) or substitute thereto with

such modification and tailoring as authorized or required elsewhere in this part.

(d) When a funding agreement involves a series of separate task orders, an agency may apply the exceptions at §401.3(a)(2) or (3) to individual task orders, and it may structure the contract so that modified patent rights provisions will apply to the task order even though the clauses at either §401.14(a) or (b) are applicable to the remainder of the work. Agencies are authorized to negotiate such modified provisions with respect to task orders added to a funding agreement after its initial award.

(e) Before utilizing any of the exceptions in §401.3(a) of this section, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a funding agreement and any subcontracts issued under it or to any funding agreement to which such an exception is applicable. In cases when §401.3(a)(2) is used, the determination shall also include an analysis justifying the determination. This analysis should address with specificity how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. A copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or prospective contractor along with a notification to the contractor or prospective contractor of its rights to appeal the determination of the exception under 35 U.S.C. 202(b)(4) and §401.4 of this part.

(f) Except for determinations under §401.3(a)(3), the agency shall also provide copies of each determination, statement of fact, and analysis to the Secretary. These shall be sent within 30 days after the award of the funding agreement to which they pertain. Copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration if the funding agreement is with a small business firm. If the Secretary of Commerce believes

that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy and recommend corrective actions.

(g) To assist the Comptroller General of the United States to accomplish his or her responsibilities under 35 U.S.C. 202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause in this part or under OMB Circular A-124 for each fiscal year beginning with October 1, 1982.

(h) To qualify for the standard clause, a prospective contractor may be required by an agency to certify that it is either a small business firm or a nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm, it may file a protest in accordance with 13 CFR 121.9. If it questions nonprofit status, it may require the prospective contractor to furnish evidence to establish its status as a nonprofit organization.

§ 401.4 Contractor appeals of exceptions.

(a) In accordance with 35 U.S.C. 202(b)(4) a contractor has the right to an administrative review of a determination to use one of the exceptions at § 401.3(a) (1) through (4) if the contractor believes that a determination is either contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency. Paragraph (b) of this section specifies the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a funding agreement or for suspending performance under an award. Pending final resolution of the

claim the contract may be issued with the patent rights provision proposed by the agency; however, should the final decision be in favor of the contractor, the funding agreement will be amended accordingly and the amendment made retroactive to the effective date of the funding agreement.

(b)(1) A contractor may appeal a determination by providing written notice to the agency within 30 working days from the time it receives a copy of the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(2) The appeal shall be decided by the head of the agency or by his/her designee who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or the designee shall undertake, or refer the matter for, fact-finding.

(3) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may rely upon. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(4) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor by registered or certified mail.

(5) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(6) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on

the facts found, together with any argument submitted by the contractor, agency officials or any other information in the administrative record. In cases referred for fact-finding, the agency head or the designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. The agency head or the designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make arguments and rebuttal. The decision of the agency head or the designee shall be in writing and, if it is unfavorable to the contractor shall include an explanation of the basis of the decision. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice. A contractor adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand, or modify as appropriate, the determination of the Federal agency.

§ 401.5 Modification and tailoring of clauses.

(a) Agencies should complete the blank in paragraph (g)(2) of the clauses at § 401.14 in accordance with their own or applicable government-wide regulations such as the Federal Acquisition Regulation. In grants and cooperative agreements (and in contracts, if not inconsistent with the Federal Acquisition Regulation) agencies wishing to apply the same clause to all subcontractors as is applied to the contractor may delete paragraph (g)(2) of the clause and delete the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1). Also, if the funding agreement is a grant or cooperative agreement, paragraph (g)(3) may be deleted. When either paragraph (g)(2) or paragraphs (g) (2) and (3) are deleted,

the remaining paragraph or paragraphs should be renumbered appropriately.

(b) Agencies should complete paragraph (l), "Communications", at the end of the clauses at § 401.14 by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph (l).

(c) Agencies may replace the italicized words and phrases in the clauses at § 401.14 with those appropriate to the particular funding agreement. For example, "contracts" could be replaced by "grant," "contractor" by "grantee," and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within the agency.

(d) When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing treaty or international agreement, a sentence may be added at the end of paragraph (b) of the clause at § 401.14 as follows:

This license will include the right of the government to sublicense foreign governments, their nationals, and international organizations, pursuant to the following treaties or international agreements:

_____.

The blank above should be completed with the names of applicable existing treaties or international agreements, agreements of cooperation, memoranda of understanding, or similar arrangements, including military agreements relating to weapons development and production. The above language is not intended to apply to treaties or other agreements that are in effect on the date of the award but which are not listed. Alternatively, agencies may use substantially similar language relating the government's rights to specific treaties or other agreements identified elsewhere in the funding agreement. The language may also be modified to

make clear that the rights granted to the foreign government, and its nationals or an international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the language above to provide for the direct licensing by the contractor of the foreign government or international organization.

(e) If the funding agreement involves performance over an extended period of time, such as the typical funding agreement for the operation of a government-owned facility, the following language may also be added:

The *agency* reserves the right to unilaterally amend this *funding agreement* to identify specific treaties or international agreements entered into or to be entered into by the government after the effective date of this *funding agreement* and effectuate those license or other rights which are necessary for the government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(f) Agencies may add additional subparagraphs to paragraph (f) of the clauses at §401.14 to require the contractor to do one or more of the following:

(1) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) Provide, upon request, the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(3) Provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report.

(g) If the contract is with a nonprofit organization and is for the operation of a government-owned, contractor-operated facility, the following will be substituted for paragraph (k)(3) of the clause at §401.14(a):

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the *contractor* during any fiscal year on subject inventions under this or any successor *contract* containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds five percent, 75 percent of the excess above five percent shall be paid by the contractor to the Treasury of the United States and the remaining 25 percent shall be used by the *contractor* only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by *contractor* employees on location at the facility.

(h) If the contract is for the operation of a government-owned facility, agencies may add the following at the end of paragraph (f) of the clause at §401.14(a):

(5) The contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a description of the procedures to the *contracting officer* so that the *contracting officer* may evaluate and determine their effectiveness.

[52 FR 8554, Mar. 18, 1987, as amended at 60 FR 41812, Aug. 14, 1995]

§ 401.6 Exercise of march-in rights.

(a) The following procedures shall govern the exercise of the march-in rights of the agencies set forth in 35 U.S.C. 203 and paragraph (j) of the clause at §401.14.

(b) Whenever an agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor as well as information relevant to the matter. In the absence of any comments from the contractor within 30 days, the agency may, at its discretion, proceed with the procedures below. If a comment is received within 30 days, or later if the

agency has not initiated the procedures below, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights on the basis of the available information.

(c) A march-in proceeding shall be initiated by the issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable and if known to the agency, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the contractor (assignee or exclusive licensee) of its rights, as set forth in this section and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of the agency or his or her designee.

(d) Within 30 days after the receipt of the written notice of march-in, the contractor (assignee or exclusive licensee) may submit in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

(e) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agree-

ment of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the government except when such release is authorized by the contractor (assignee or licensee).

(f) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor oral arguments will be held before the agency head or designee that will make the final determination.

(g) In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. Written notice of the determination whether march-in rights will be exercised shall be made by the head of the agency or designee and sent to the contractor (assignee or exclusive licensee) by certified or registered mail within 90 days

after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercised.

(h) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(i) The procedures of this part shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor" as used in this section shall be deemed to include the inventor.

(j) An agency determination unfavorable to the contractor (assignee or exclusive licensee) shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 203(2).

(k) For purposes of this section the term *exclusive licensee* includes a partially exclusive licensee.

(l) Agencies are authorized to issue supplemental procedures not inconsistent with this part for the conduct of march-in proceedings.

§401.7 Small business preference.

(a) Paragraph (k)(4) of the clauses at §401.14 Implements the small business preference requirement of 35 U.S.C. 202(c)(7)(D). Contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market. Paragraph (k)(4) is not intended, for example, to prevent nonprofit organizations from providing larger firms with a right of first refusal or other options in inventions that relate to research being supported under long-term or other arrangements with larger companies. Under such circumstances it would not be reasonable to seek and to

give a preference to small business licensees.

(b) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the Secretary. To the extent deemed appropriate, the Secretary will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meeting its obligations under the clause. However, in no event will the Secretary intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. All the above investigations, discussions, and negotiations of the Secretary will be in coordination with other interested agencies, including the Small Business Administration; and in the case of a contract for the operation of a government-owned, contractor operated research or production facility, the Secretary will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

401.8 Reporting on utilization of subject inventions.

(a) Paragraph (h) of the clauses at §401.14 and its counterpart in the clause at Attachment A to OMB Circular A-124 provides that agencies have the right to receive periodic reports from the contractor on utilization of inventions. Agencies exercising this right should accept such information, to the extent feasible, in the format that the contractor normally prepares it for its own internal purposes. The prescription of forms should be avoided. However, any forms or standard questionnaires that are adopted by an agency for this purpose must comply with the requirements of the Paperwork Reduction Act. Copies shall be sent to the Secretary.

(b) In accordance with 35 U.S.C. 202(c)(5) and the terms of the clauses at §401.14, agencies shall not disclose such information to persons outside the government. Contractors will continue to provide confidential markings to help prevent inadvertent release outside the agency.

§ 401.9 Retention of rights by contractor employee inventor.

Agencies which allow an employee/inventor of the contractor to retain rights to a subject invention made under a funding agreement with a small business firm or nonprofit organization contractor, as authorized by 35 U.S.C. 202(d), will impose upon the inventor at least those conditions that would apply to a small business firm contractor under paragraphs (d)(1) and (3); (f)(4); (h); (i); and (j) of the clause at § 401.14(a).

§ 401.10 Government assignment to contractor of rights in invention of government employee.

In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a small business firm or nonprofit organization and the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the same conditions as apply to the contractor under the patent rights clause of its funding agreement. Agencies may add additional conditions as long as they are consistent with 35 U.S.C. 201-206.

§ 401.11 Appeals.

(a) As used in this section, the term *standard clause* means the clause at § 401.14 of this part and the clauses previously prescribed by either OMB Circular A-124 or OMB Bulletin 81-22.

(b) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for his or her action at the time the action is taken, including any relevant facts that were relied upon in taking the action.

(1) A refusal to grant an extension under paragraph (c)(4) of the standard clauses.

(2) A request for a conveyance of title under paragraph (d) of the standard clauses.

(3) A refusal to grant a waiver under paragraph (i) of the standard clauses.

(4) A refusal to approve an assignment under paragraph (k)(1) of the standard clauses.

(5) A refusal to grant an extension of the exclusive license period under paragraph (k)(2) of the clauses prescribed by either OMB Circular A-124 or OMB Bulletin 81-22.

(c) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (b) of this section may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the actions and its consistency with the policy and objectives of 35 U.S.C. 200-206.

(d) Appeals procedures established under paragraph (c) of this section shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in § 401.6 (e) through (g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under paragraph (d) of the standard clause, including any dispute as to whether or not an invention is a subject invention.

(e) To the extent that any of the actions described in paragraph (b) of this section are subject to appeal under the Contract Dispute Act, the procedures under the Act will satisfy the requirements of paragraphs (c) and (d) of this section.

§ 401.12 Licensing of background patent rights to third parties.

(a) A funding agreement with a small business firm or a domestic nonprofit organization will not contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and a written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

(b) A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for an agency hearing. The contractor shall be given prompt notification of the determination by certified or registered mail. Any action commenced for judicial review of such determination shall be brought within sixty days after notification of such determination.

§ 401.13 Administration of patent rights clauses.

(a) In the event a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the government in the invention.

(b) Agencies shall promptly grant, unless there is a significant reason not to, a request by a nonprofit organization under paragraph (k)(2) of the clauses prescribed by either OMB Circular A-124 or OMB Bulletin 81-22 inasmuch as 35 U.S.C. 202(c)(7) has since been amended to eliminate the limitation on the duration of exclusive licenses. Similarly, unless there is a significant reason not to, agencies shall promptly approve an assignment by a nonprofit organization to an organization which has as one of its primary functions the management of inventions when a request for approval has been necessitated under paragraph (k)(1) of the clauses prescribed by either OMB Circular A-124 or OMB Bulletin 81-22 because the patent management organization is engaged in or holds a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention. As amended, 35 U.S.C. 202(c)(7) no longer contains this limitation. The policy of this subsection

should also be followed in connection with similar approvals that may be required under Institutional Patent Agreements, other patent rights clauses, or waivers that predate Chapter 18 of Title 35, United States Code.

(c) The President's Patent Policy Memorandum of February 18, 1983, states that agencies should protect the confidentiality of invention disclosure, patent applications, and utilization reports required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws. The following requirements should be followed for funding agreements covered by and predating this part 401.

(1) To the extent authorized by 35 U.S.C. 205, agencies shall not disclose to third parties pursuant to requests under the Freedom of Information Act (FOIA) any information disclosing a subject invention for a reasonable time in order for a patent application to be filed. With respect to subject inventions of contractors that are small business firms or nonprofit organizations, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of the standard clause found at § 401.14(a) or such other clause may be used in the funding agreement. However, an agency may disclose such subject inventions under the FOIA, at its discretion, after a contractor has elected not to retain title or after the time in which the contractor is required to make an election if the contractor has not made an election within that time. Similarly, an agency may honor a FOIA request at its discretion if it finds that the same information has previously been published by the inventor, contractor, or otherwise. If the agency plans to file itself when the contractor has not elected title, it may, of course, continue to avail itself of the authority of 35 U.S.C. 205.

(2) In accordance with 35 U.S.C. 205, agencies shall not disclose or release for a period of 18 months from the filing date of the patent application to third parties pursuant to requests under the Freedom of Information Act, or otherwise, copies of any document which the agency obtained under this clause which is part of an application

for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other government agencies or contractors of government agencies under an obligation to maintain such information in confidence.

(3) A number of agencies have policies to encourage public dissemination of the results of work supported by the agency through publication in government or other publications of technical reports of contractors or others. In recognition of the fact that such publication, if it included descriptions of a subject invention could create bars to obtaining patent protection, it is the policy of the executive branch that agencies will not include in such publication programs copies of disclosures of inventions submitted by small business firms or nonprofit organizations, pursuant to paragraph (c) of the standard clause found at § 401.14(a), except that under the same circumstances under which agencies are authorized to release such information pursuant to FOIA requests under paragraph (c)(1) of this section, agencies may publish such disclosures.

(4) Nothing in this paragraph is intended to preclude agencies from including in the publication activities described in the first sentence of paragraph (c)(3), the publication of materials describing a subject invention to the extent such materials were provided as part of a technical report or other submission of the contractor which were submitted independently of the requirements of the patent rights provisions of the contract. However, if a small business firm or nonprofit organization notifies the agency that a particular report or other submission contains a disclosure of a subject invention to which it has elected title or may elect title, the agency shall use reasonable efforts to restrict its publication of the material for six months from date of its receipt of the report or submission or, if earlier, until the contractor has filed an initial patent application. Agencies, of course, retain

the discretion to delay publication for additional periods of time.

(5) Nothing in this paragraph is intended to limit the authority of agencies provided in 35 U.S.C. 205 in circumstances not specifically described in this paragraph.

[52 FR 8554, Mar. 18, 1987, as amended at 60 FR 41812, Aug. 14, 1995]

§ 401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in § 401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal

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Revenue Code (25 U.S.C. 501(a)) or any non-profit scientific or educational organization qualified under a state nonprofit organization statute.

(B) ALLOCATION OF PRINCIPAL RIGHTS

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applica-

tions in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(D) CONDITIONS WHEN THE GOVERNMENT MAY OBTAIN TITLE

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(E) MINIMUM RIGHTS TO *Contractor* AND PROTECTION OF THE *Contractor* RIGHT TO FILE

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of

the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(F) *Contractor ACTION TO PROTECT THE GOVERNMENT'S INTEREST*

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of re-

porting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the *Federal agency*). The government has certain rights in the invention."

(G) SUBCONTRACTS

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the *Federal agency* was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the *Federal agency* with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(H) REPORTING ON UTILIZATION OF SUBJECT INVENTIONS

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The

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contractor also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(I) PREFERENCE FOR UNITED STATES INDUSTRY

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(J) MARCH-IN RIGHTS

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or be-

cause a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(K) SPECIAL PROVISIONS FOR *Contracts* WITH NONPROFIT ORGANIZATIONS

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(L) COMMUNICATION

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under § 401.3(a)(4), the standard clause at § 401.14(a), of this section,

shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an “(A)” after “(1)” in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)–(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at § 401.5(g).

§ 401.15 Deferred determinations.

(a) This section applies to requests for greater rights in subject inventions made by contractors when deferred determination provisions were included in the funding agreement because one of the exceptions at § 401.3(a) was ap-

plied, except that the Department of Energy is authorized to process deferred determinations either in accordance with its waiver regulations or this section. A contractor requesting greater rights should include with its request information on its plans and intentions to bring the invention to practical application. Within 90 days after receiving a request and supporting information, or sooner if a statutory bar to patenting is imminent, the agency should seek to make a determination. In any event, if a bar to patenting is imminent, unless the agency plans to file on its own, it shall authorize the contractor to file a patent application pending a determination by the agency. Such a filing shall normally be at the contractor's own risk and expense. However, if the agency subsequently refuses to allow the contractor to retain title and elects to proceed with the patent application under government ownership, it shall reimburse the contractor for the cost of preparing and filing the patent application.

(b) If the circumstances of concerns which originally led the agency to invoke an exception under § 401.3(a) are not applicable to the actual subject invention or are no longer valid because of subsequent events, the agency should allow the contractor to retain title to the invention on the same conditions as would have applied if the standard clause at § 401.14(a) had been used originally, unless it has been licensed.

(c) If paragraph (b) is not applicable the agency shall make its determination based on an assessment whether its own plans regarding the invention will better promote the policies and objectives of 35 U.S.C. 200 than will contractor ownership of the invention. Moreover, if the agency is concerned only about specific uses or applications of the invention, it shall consider leaving title in the contractor with additional conditions imposed upon the contractor's use of the invention for such applications or with expanded government license rights in such applications.

(d) A determination not to allow the contractor to retain title to a subject invention or to restrict or condition its title with conditions differing from

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those in the clause at § 401.14(a), unless made by the head of the agency, shall be appealable by the contractor to an agency official at a level above the person who made the determination. This appeal shall be subject to the procedures applicable to appeals under § 401.11 of this part.

§ 401.16 Electronic filing.

Unless otherwise requested or directed by the agency,

(a) The written report required in (c)(1) of the standard clause in § 401.14(a) may be electronically filed;

(b) The written election required in (c)(2) of the standard clause in § 401.14(a) may be electronically filed; and

(c) The close-out report in (f)(1) and the information identified in (f)(2) and (f)(3) of § 401.5 may be electronically filed.

[60 FR 41812, Aug. 14, 1995]

§ 401.17 Submissions and inquiries.

All submissions or inquiries should be directed to Director, Technology Competitiveness Staff, Office of Technology Policy, Technology Administration, telephone number 202-482-2100, Room H4418, U.S. Department of Commerce, Washington, DC 20230.

[60 FR 41812, Aug. 14, 1995]

PART 404—LICENSING OF GOVERNMENT OWNED INVENTIONS

Sec.

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404.14 Confidentiality of information.

AUTHORITY: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce

to the Assistant Secretary of Commerce for Technology Policy at sec. 3(g) of DDO 10-18.

SOURCE: 50 FR 9802, Mar. 12, 1985, unless otherwise noted.

§ 404.1 Scope of part.

This part prescribes the terms, conditions, and procedures upon which a federally owned invention, other than an invention in the custody of the Tennessee Valley Authority, may be licensed. It supersedes the regulations at 41 CFR Subpart 101-4.1. This part does not affect licenses which (a) were in effect prior to July 1, 1981; (b) may exist at the time of the Government's acquisition of title to the invention, including those resulting from the allocation of rights to inventions made under Government research and development contracts; (c) are the result of an authorized exchange of rights in the settlement of patent disputes; or (d) are otherwise authorized by law or treaty.

§ 404.2 Policy and objective.

It is the policy and objective of this subpart to use the patent system to promote the utilization of inventions arising from federally supported research or development.

§ 404.3 Definitions.

(a) *Federally owned invention* means an invention, plant, or design which is covered by a patent, or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection, in a foreign country, title to which has been assigned to or otherwise vested in the United States Government.

(b) *Federal agency* means an executive department, military department, Government corporation, or independent establishment, except the Tennessee Valley Authority, which has custody of a federally owned invention.

(c) *Small business firm* means a small business concern as defined in section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(d) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and,

in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(e) *United States* means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 404.4 Authority to grant licenses.

Federally owned inventions shall be made available for licensing as deemed appropriate in the public interest. Federal agencies having custody of federally owned inventions may grant non-exclusive, partially exclusive, or exclusive licenses thereto under this part.

§ 404.5 Restrictions and conditions on all licenses granted under this part.

(a)(1) A license may be granted only if the applicant has supplied the Federal agency with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under a federally owned invention in the United States shall normally be granted only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) Licenses shall contain such terms and conditions as the Federal agency determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated in accordance with this part.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Federal agency, except to the successor

of that part of the licensee's business to which the invention pertains.

(4) The licensee may provide the license the right to grant sublicenses under the license, subject to the approval of the Federal agency. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of such sublicense shall be furnished to the Federal agency.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report periodically on the utilization or efforts at obtaining utilization that are being made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) Where an agreement is obtained pursuant to § 404.5(a)(2) that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Federal agency to terminate the license, in whole or in part, if:

(i) The Federal agency determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Federal agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

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(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated, consistent with this part, upon mutual agreement of the Federal agency and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

§ 404.6 Nonexclusive licenses.

(a) Nonexclusive licenses may be granted under federally owned inventions without publication of availability or notice of a prospective license.

(b) In addition to the provisions of § 404.5, the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Federal agency may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license in accordance with this subpart.

§ 404.7 Exclusive and partially exclusive licenses.

(a)(1) Exclusive or partially exclusive domestic licenses may be granted on federally owned inventions three months after notice of the invention's availability has been announced in the FEDERAL REGISTER, or without such notice where the Federal agency determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and in either situation, only if:

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the period in § 404.7(a)(1)(i) and consideration of any written objections received during the period, the Federal agency has determined that;

(A) The interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) The desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(iii) The Federal agency has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws; and

(iv) The Federal agency has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(2) In addition to the provisions of § 404.5, the following terms and conditions apply to domestic exclusive and partially exclusive licenses;

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to

practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall reserve to the Federal agency the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(iii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iv) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of Chapter 29 of Title 35, United States Code, or other statutes, as determined appropriate in the public interest.

(b)(1) Exclusive or partially exclusive licenses may be granted on a federally owned invention covered by a foreign patent, patent application, or other form of protection, provided that:

(i) Notice of a prospective license, identifying the invention and prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(ii) The agency has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(iii) The Federal agency has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(2) In addition to the provisions of § 404.5 the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or

international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iii) The license may grant the licensee the right to take any suitable and necessary actions to protect the licensed property, on behalf of the Federal Government.

(c) Federal agencies shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

§ 404.8 Application for a license.

An application for a license should be addressed to the Federal agency having custody of the invention and shall normally include:

(a) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in § 404.3(c)

(h) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 404.9 Notice to Attorney General.

A copy of the notice provided for in § 404.7 (a)(1)(i) and (b)(1)(i) will be sent to the Attorney General.

§ 404.10 Modification and termination of licenses.

Before modifying or terminating a license, other than by mutual agreement, the Federal agency shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license shall not be modified or terminated.

§ 404.11 Appeals.

In accordance with procedures prescribed by the Federal agency, the following parties may appeal to the agency head or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(a) A person whose application for a license has been denied.

(b) A licensee whose license has been modified or terminated, in whole or in part; or

(c) A person who timely filed a written objection in response to the notice required by § 404.7(a)(1)(i) or § 404.7(b)(1)(i) and who can demonstrate to the satisfaction of the Federal agency that such person may be damaged by the agency action.

§ 404.12 Protection and administration of inventions.

A Federal agency may take any suitable and necessary steps to protect and administer rights to federally owned inventions, either directly or through contract.

§ 404.13 Transfer of custody.

A Federal agency having custody of a federally owned invention may transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in such invention.

§ 404.14 Confidentiality of information.

Title 35, United States Code, section 209, provides that any plan submitted pursuant to § 404.8(h) and any report required by § 404.5(b)(6) may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of Title 5 of the United States Code.