

unsigned requests that meet these conditions may be permitted, where a follow-up written request detailing the same information is received by the Copyright Office within fourteen days after the required sixty-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 (m)(2)(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 (m)(2)(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 amended Statement of Account. The amended Statement shall include an explanation of why the royalty fee was improperly calculated and a detailed analysis of the proper royalty calculations.

(iv)(A) All requests filed under this paragraph (m) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part 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; and

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (m) 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 (m) must be signed by the cable system owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(14) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the cable system owner named in the Statement of Account without regard to the time limitations provided for in paragraph (m)(4)(i) of this section.

(5) Following final processing, all requests submitted under this paragraph (m) 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.

(m) *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.

(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, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

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

(a) *General.* (1) A "Notice of Intention" is a Notice identified in section

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115(b) of title 17 of the United States Code, and required by that section to be served on a copyright owner or, in certain cases, to be filed in the Copyright Office, before or within thirty days after making, and before distributing any phonorecords of the work, in order to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A person is entitled to serve or file a Notice of Intention and thereby obtain a compulsory license pursuant to 17 U.S.C. 115 only if the primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery.

(3) For the purposes of this section, 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. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of time or for a specified number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.

(4) A Notice of Intention shall be served or filed for nondramatic musical works embodied, or intended to be embodied, in phonorecords made under the compulsory license. For purposes of this section and subject to paragraphs (a)(4)(ii) and (iii) of this section, a Notice filed with the Copyright Office which lists multiple works shall be considered a single Notice and fees shall be paid in accordance with the fee schedule set forth in § 201.3(e)(1) if filed in the Copyright Office under paragraph (f)(3) of this section. Payment of the applicable fees for a Notice sub-

mitted electronically under this paragraph shall be made through a deposit account established under § 201.6(b).

(i) Except as provided for in paragraph (a)(7), a Notice of Intention served on a copyright owner or agent of a copyright owner may designate any number of nondramatic musical works provided that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary and that the copyright owner of each designated work is the same, or in the case of any work having more than one copyright owner, that any one of the copyright owners is the same and is the copyright owner served.

(ii) A Notice of Intention filed in the Copyright Office in paper form may designate any number of nondramatic musical works provided that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary, and that the copyright owner of each designated work (or, in the case of works having more than one copyright owner, any one of the copyright owners) is the same and the registration records or other public records of the Copyright Office do not identify the copyright owner(s) of such work(s) and include an address for any such owner(s) at which notice can be served. For purposes of this subparagraph, in the case of works having more than one copyright owner, a single Notice must identify an actual person or entity as the common copyright owner; the common copyright owner may not be identified as “unknown.” However, a single Notice may include multiple works for which no copyright owners can be identified for any of the listed works.

(iii) A Notice of Intention filed in the Copyright Office through its electronic filing system may designate multiple nondramatic musical works, regardless of whether the copyright owner of each designated work (or, in the case of any work having more than one copyright owner, any one of the copyright owners) is the same, provided that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary, and that for any designated work, the records of the Copyright Office do not include an address at which notice can be served.

(5) 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.

(6) For the purposes of this section, service of a Notice of Intention on a copyright owner may be accomplished by means of service of the Notice on either the copyright owner or an agent of the copyright owner with authority to receive the Notice. In the case where the work has more than one copyright owner, the service of the Notice on any one of the co-owners of the nondramatic musical work or upon an authorized agent of one of the co-owners identified in the Notice of Intention shall be sufficient with respect to all co-owners. Notwithstanding paragraph (a)(2) of this section, a single Notice may designate works not owned by the same copyright owner in the case where the Notice is served on a common agent of multiple copyright owners, and where each of the works designated in the Notice is owned by any of the copyright owners who have authorized that agent to receive Notices.

(7) For purposes of this section, a copyright owner or an agent of a copyright owner with authority to receive Notices of Intention may make public a written policy that it will accept Notices of Intention to make and distribute phonorecords pursuant to 17 U.S.C. 115 which include less than all of the information required by this section, in a form different than required by this section, or delivered by means (including electronic transmission) other than those required by this section. Any Notice provided in accordance with such policy shall not be rendered invalid for failing to comply with the specific requirements of this section.

(8) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord manufactured, made, and distributed on the date the phonorecord is digitally transmitted.

(b) *Agent.* An agent who has been authorized to accept Notices of Intention in accordance with paragraph (a)(6) of this section and who has received a No-

tice of Intention on behalf of a copyright owner shall provide within two weeks of the receipt of that Notice of Intention the name and address of the copyright owner or its agent upon whom the person or entity intending to obtain the compulsory license shall serve Statements of Account and the monthly royalty in accordance with § 210.16(g) of this chapter.

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

(d) *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 telephone number, the full address, including a specific number and street name or rural route of the place of business, and an e-mail address, if available, of the person or entity intending to obtain the compulsory license, and if a business organization intends to obtain the compulsory license, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such 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.

(iii) The information specified in paragraphs (d)(1)(i) and (ii) of this section for the primary entity expected to be engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution (for example: a record company or digital music service), if an entity intending to obtain the compulsory license is a holding company, trust or other entity that is not expected to be actively engaged in

the business of making and distributing phonorecords under the license or of authorizing such making and distribution;

(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) For each nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license:

(A) The title of the nondramatic musical work;

(B) The name of the author or authors, if known;

(C) A copyright owner of the work, if known;

(D) The types of all phonorecord configurations already made (if any) and expected to be made under the compulsory license (for example: single disk, long-playing disk, cassette, cartridge, reel-to-reel, a digital phonorecord delivery, or a combination of them);

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

(F) 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;

(G) 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

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

(vi) In the case where the Notice will be filed with the Copyright Office pursuant to paragraph (f)(3) of this section, the Notice shall include an affirmative statement that with respect to the nondramatic musical work named in the Notice of Intention, the registration records or other public records of the Copyright Office have been searched and found not to identify the name and address of the copyright owner of such work.

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

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

(e) *Signature.* The Notice shall be signed by the person or entity intending to obtain the compulsory license or by a duly authorized agent of such person or entity.

(1) If the person or entity intending to obtain the compulsory license is a corporation, the signature shall be that of a duly authorized officer or agent of the corporation.

(2) If the person or entity intending to obtain the compulsory license is a partnership, the signature shall be that of a partner or of a duly authorized agent of the partnership.

(3) If the Notice is signed by a duly authorized agent for the person or entity intending to obtain the compulsory license, the Notice shall include an affirmative statement that the agent is authorized to execute the Notice of Intention on behalf of the person or entity intending to obtain the compulsory license.

(4) If the Notice is served electronically, the person or entity intending to obtain the compulsory license and the copyright owner shall establish a procedure to verify that the Notice is being submitted upon the authority of the person or entity intending to obtain the compulsory license.

(5) If the Notice is filed in the Office electronically, the person or entity intending to obtain the compulsory license or a duly authorized agent of such person or entity shall, rather than signing the Notice, attest that he or she has the appropriate authority of the licensee, including any related entities listed, if applicable, to submit

the electronically filed Notice on behalf of the licensee.

(f) *Filing and service.* (1) If the registration records or other public records of the Copyright Office identify the copyright owner of the nondramatic musical works named in the Notice of Intention and include an address for such owner, the Notice may be served on such owner by mail sent to, or by reputable courier service at, 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.

(2) If the Notice is sent by mail or delivered by reputable courier service to the last address for the copyright owner shown by the records of the Copyright Office and the Notice 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 (f)(2) shall be submitted to the Licensing Division of the Copyright Office, 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 may be accompanied by appropriate evidence that it was mailed to, or that delivery by reputable courier service was attempted at, that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, or the date delivery by courier service was attempted, if shown by the evidence mentioned above, as the date of filing. An acknowledgment of receipt and filing will be provided to the sender.

(3) If, with respect to the nondramatic musical works named in the Notice of Intention, the registration records 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 may be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in §201.3(e). A separate fee shall be assessed for each title listed in the Notice. Notices of Intention will be

placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when the Notice and fee are both received in the Copyright Office. An acknowledgment of receipt and filing will be provided to the sender.

(4) Alternatively, if the person or entity intending to obtain the compulsory license knows the name and address of the copyright owner of the nondramatic musical work, or the agent of the copyright owner as described in paragraph (b) of this section, the Notice of Intention may be served on the copyright owner or the agent of the copyright owner by sending the Notice by mail or delivering it by reputable courier service to the address of the copyright owner or agent of the copyright owner. For purposes of section 115(b)(1) of title 17 of the United States Code, the Notice will not be considered properly served if the Notice is not sent to the copyright owner or the agent of the copyright owner as described in paragraph (b) of this section, or if the Notice is sent to an incorrect address.

(5) If a Notice of Intention is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If a Notice of Intention is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the Notice of Intention was served in a timely manner.

(6) If a Notice served upon a copyright owner or an authorized agent of a copyright owner identifies more than 50 works that are embodied or intended to be embodied in phonorecords made under the compulsory license, the copyright owner or the authorized agent may send the person who served the Notice a demand that a list of each of the works so identified be resubmitted in an electronic format, along with a copy of the original Notice. The

person who served the Notice must submit such a list, which shall include all of the information required in paragraph (d)(1)(v) of this section, within 30 days after receipt of the demand from the copyright owner or authorized agent. The list shall be submitted on magnetic disk or another medium widely used at the time for electronic storage of data, in the form of a flat file, word processing document or spreadsheet readable with computer software in wide use at such time, with the required information identified and/or delimited so as to be readily discernible. The list may be submitted by means of electronic transmission (such as e-mail) if the demand from the copyright owner or authorized agent states that such submission will be accepted.

(g) *Filing date and legal sufficiency of Notices.* The Copyright Office will notify a prospective licensee when a Notice was not accompanied by payment of the required fee. Notices shall be deemed filed as of the date the Office receives both the Notice and the fee, if applicable. If the prospective licensee fails to remit the required fee, the Notice will be deemed not to have been filed with the Office. However, the Copyright Office does not review Notices for legal sufficiency or interpret the content of any Notice filed with the Copyright Office under this section. Furthermore, the Copyright Office does not screen Notices for errors or discrepancies and it does not generally correspond with a prospective licensee about the sufficiency of a Notice. If any issue (other than an issue related to fees) arises as to whether a Notice filed in the Copyright Office is sufficient as a matter of law under this section, that issue shall be determined not by the Copyright Office, but shall be subject to a determination of legal sufficiency by a court of competent jurisdiction. Prospective licensees are therefore cautioned to review and scrutinize Notices to assure their legal sufficiency before filing them in the Copyright Office.

(h) *Harmless errors.* Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of section 115(b)(1) of title 17 of the United States

Code, shall not render the Notice invalid.

(i) *Privacy Act Advisory Statement.* The authority for receiving the personally identifying information included within a Notice of Intention to obtain a compulsory license is found in 17 U.S.C. 115 and §201.18. Personally identifying information is any personal information that can be used to identify or trace an individual, such as name, address or telephone numbers. Furnishing the information set forth in §201.18 is voluntary. However, if the information is not furnished, it may affect the sufficiency of Notice of Intention to obtain a compulsory license and may not entitle the prospective licensee to the benefits available under 17 U.S.C. 115. The principal uses of the requested information are the establishment and maintenance of a public record of the Notices of Intention to obtain a compulsory license received in the Licensing Division of the Copyright Office. Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright records including online catalogs, and preparation of search reports upon request.

[69 FR 34582, June 22, 2004, as amended at 73 FR 66181, Nov. 7, 2008; 77 FR 71103, Nov. 29, 2012; 79 FR 56206, Sept. 18, 2014; 82 FR 9358, Feb. 6, 2017]

§§ 201.19–201.21 [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(c) 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