§ 150.4 Evaluation.

(a) Upon submission of a request by a foreign government for the issuance of a section 902 proclamation, if an interim order under section 914 has not been issued, the Director may 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 Director receives the request of a foreign government for a section 902 proclamation, or after a determination is made by the Director 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 Director within sixty (60) days of publication of the FEDERAL REGISTER notice.

(d) The Director 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 Director 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 Director.

(g) The Director 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 pursuant to these guidelines shall be addressed to: Mail Stop Congressional Relations, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

[70 FR 10490, Mar. 4, 2005]

PARTS 151–199 [RESERVED]

CHAPTER II—U.S. COPYRIGHT OFFICE, LIBRARY OF CONGRESS

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SUBCHAPTER A—COPYRIGHT OFFICE AND PROCEDURES

PART 200 [RESERVED]

PART 201—GENERAL PROVISIONS

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AUTHORITY: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

§ 201.1 Communication with the Copyright Office.

(a) *General purpose addresses.* Members of the public must use the correct address in order to facilitate timely receipt by the U.S. Copyright Office division or section to which an inquiry should be directed. The address set forth in paragraph (b) may be used for general inquiries made to a particular division or section of the U.S. Copyright Office. Addresses for special, limited purposes are provided below in paragraph (c) of this section. Please note that the Library of Congress no longer accepts direct deliveries from

commercial couriers and messengers.[1] For additional address information, including information on courier delivery, mail delays, or disruptions, please visit the ''Contact us'' section on the Office's website (*http://www.copyright.gov*). General questions may also be directed to the U.S. Copyright Office website submission form at: *http://www.copyright.gov/help/general-form.html*.

(b) *General purpose address.* (1) Mail and other communications that do not come under the areas listed in paragraph (b)(2) of this section shall be addressed to the Library of Congress, U.S. Copyright Office, 101 Independence Avenue SE., Washington, DC 20559–6000, or as otherwise indicated in instructions on the Copyright Office's website or forms provided by the Office.

(2) *Codes to facilitate the routing of mail.* To assure that postal mail is routed correctly within the U.S. Copyright Office, applicants should indicate, by the appropriate code, the general subject matter of the correspondence. Such correspondence should be addressed to the Office in the following manner: Library of Congress, U.S. Copyright Office—(Insert appropriate code listed below), 101 Independence Avenue SE., Washington, DC 20559–6000.

Type of submission	Code
Registration of Literary Works	TX
Registration of Serials	SE
Registration of Visual Arts Works	VA
Registration of Works of the Performing Arts, except Motion Pictures.	PA
Registration of Sound Recordings	SR
Registration of Motion pictures	MP
Registration of Renewal claims	RE
Document Recordations	DOC
Registration of Mask Works	MW
Registration of Vessel Designs	VH
Acquisitions and Deposits	A&D
Deposit Demands	A&D/AD
Licensing Section	LS
Notice to Libraries and Archives	NLA
Publications Section	PUB

(c) *Limited purpose addresses.* The following addresses may be used only in the special, limited circumstances given for a particular U.S. Copyright Office service:

(1) *Time Sensitive Notices and Requests.* Other than notices served on the Register of Copyrights submitted pursuant to 17 U.S.C. 411(a), 411(b)(2), and 508, all time sensitive correspondence to the Office of the General Counsel and the Office of Policy and International Affairs, and requests for expedited service from the Records Research and Certification Section of the Office of Public Information and Education to meet the needs of pending or prospective litigation, customs matters, or contract or publishing deadlines should be addressed to: U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024–0400. Freedom of Information Act (FOIA) requests and FOIA appeals must also be mailed to: P.O. Box 70400, Washington, DC 20024–0400, but clearly labeled ''Freedom of Information Act Request'' or ''Freedom of Information Act Appeal'' as appropriate. Notices and requests served on the Register of Copyrights submitted pursuant to 17 U.S.C. 411(a) or 411(b)(2) should be submitted via email in accordance with 37 CFR 205.13 (for section 411(a) notices) and §205.14 (for section 411(b)(2) notices). Notices served on the Register of Copyrights submitted pursuant to 17 U.S.C. 508 should be submitted via email in accordance with 37 CFR 205.15.

(2) *Notices of Termination.* Notices of Termination of transfers and licenses under sections 203 and 304 of the Copyright Act should be addressed to: U.S. Copyright Office, Notices of Termination, and submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to P.O. Box 71537, Washington, DC 20024–1537.

(3) *Reconsiderations of Refusals to Register and Requests for Cancellation.* First and second requests for reconsideration of refusal to register a copyright, mask work, or vessel design claim, and requests to cancel registered works should be addressed to: U.S. Copyright Office, MCA Division, and submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to P.O. Box 71380, Washington, DC 20024–1380.

(4) *Searches and Copies of Records or Deposits.* Requests for searches of registrations and recordations in the completed catalogs, indexes, and/or other records of the U.S. Copyright Office as well as requests for copies of records or

[1] *See* 69 FR 5371 (Feb. 4, 2004) and 68 FR 70039 (Dec. 16, 2003).

deposits for use in litigation or other authorized purposes should be addressed to: U.S. Copyright Office, Records Research and Certification Section, and submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to P.O. Box 70400, Washington, DC 20559–0400.

(5) *Inquiries to Licensing Section.* Filings or inquiries to the Licensing Section may be submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail. If sending by mail, notices related to statutory licenses under 17 U.S.C. 112, 114, and 115 should be addressed to: U.S. Copyright Office, P.O. Box 70977, Washington, DC 20024–0400. Statements of account related to statutory licenses under 17 U.S.C. 119 and chapter 10 should be addressed to: U.S. Copyright Office, SOA, P.O. Box 70400, Washington, DC 20024–0400. Filings or inquiries related to section 111 licenses should be sent to Library of Congress, U.S. Copyright Office, Attn: 111 Licenses, 101 Independence Avenue SE., Washington, DC 20559.

(6) *Mandatory deposit copies.* Mandatory deposit copies of published works submitted for the Library of Congress under 17 U.S.C. 407 and § 202.19 of this chapter (including serial publications that are not being registered) should be addressed to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559–6600, except that mandatory deposit copies submitted as complimentary subscriptions for serial publications that are being registered should be addressed to: Library of Congress, Group Serials Registration, Washington, DC 20540–4161.

(7) *Requests to remove PII from registration records.* Requests to remove personally identifiable information from registration records pursuant to §§ 201.2(e) and (f) should be addressed to: U.S. Copyright Office, Associate Register of Copyrights and Director of the Office of Public Information and Education. Requests may be submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to P.O. Box 70400, Washington, DC 20024–0400, and clearly labeled ''Request to Remove Requested PII,'' ''Request for Reconsideration Following Denial of Request to Remove Requested PII,'' or ''Request to Remove Extraneous PII,'' as appropriate.

[78 FR 42873, July 18, 2013, as amended at 82 FR 9007, Feb. 2, 2017; 82 FR 9355, Feb. 6, 2017; 82 FR 21697, May 10, 2017; 83 FR 4145, Jan. 30, 2018; 83 FR 61549, Nov. 30, 2018; 84 FR 60918, Nov. 12, 2019; 85 FR 19667, Apr. 8, 2020; 85 FR 10604, Feb. 25, 2020; 85 FR 31982, May 28, 2020; 86 FR 32641, June 22, 2021]

§ 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 to the public, except that it may provide a directory of *pro bono* representation available to participants in proceedings before the Copyright Claims Board.

(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 Records Research and Certification Section. Since some of these materials are not stored on the immediate premises of the Copyright Office, it is advisable to consult the Records Research and Certification

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 Management Section, LM B–14, 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 Office of Public Information and Education, 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 Records Research and Certification 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 applicant or 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)(i) Access will be afforded as follows to pending applications for registration, the deposit material accompanying them, and pending documents for recordation:

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

(B) 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.

(ii) These requests should be made to the Records Research and Certification Section, 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 mailed to the address specified in §201.1(c).

(6) Direct public access will not be permitted to any financial or accounting records, including records maintained on Deposit Accounts.

(7) The Register of Copyrights has issued an administrative manual known as the Compendium of U.S. Copyright Office Practices, Third Edition. The Compendium explains many of the practices and procedures concerning the Office's mandate and statutory duties under title 17 of the United States Code. It is both a technical manual for the Copyright Office's staff, as well as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public. The Third Edition and prior editions of the Compendium may be viewed, downloaded, or printed from the Office's website. They are also available for public inspection and copying in the Records Research and Certification Section.

(c) *Correspondence.* (1) Official correspondence, including preliminary applications, between copyright claimants 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 not respond to any abusive or scurrilous correspondence or correspondence where the intent is unknown.

(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 Records Research and Certification 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, quadraphonic, or any other type of fixation of the work accepted for deposit.

(e) *Requests for removal of requested personally identifiable information from the online public catalog.* (1) In general, an author, claimant of record, or the authorized representative of the author or claimant of record may submit a request to remove certain categories of personally identifiable information (''PII'') described in paragraph (e)(2) of this section from the Copyright Office's online public catalog by following the procedure set forth in paragraph (e)(3) of this section. Where the requester provides verifiable, non-personally identifiable substitute information to replace the PII being removed, the Office will grant the request unless it determines that the need to maintain the original information in the public record substantially outweighs the safety, privacy, or other stated concern. If the requester does not provide verifiable, non-personally-identifiable substitute information, the Office will grant the request only if the safety, privacy, or other stated concern substantially outweighs the need for the information to remain in the public record. The Office will review requests by joint authors or claimants on a case-by-case basis.

(2) Categories of personally identifiable information that may be removed from the online public catalog include names, home addresses, personal telephone and fax numbers, personal email addresses, and other information that is requested by the Office as part the copyright registration application except that:

(i) Requests for removal of driver's license numbers, social security numbers, banking information, credit card information and other extraneous PII covered by paragraph (f) of this section are governed by the provisions of that paragraph.

(ii) Requests to remove the address of a copyright claimant must be accompanied by a verifiable substitute address. The Office will not remove the address of a copyright claimant unless such a verifiable substitute address is provided.

(iii) Names of authors or claimants may not be removed or replaced with a pseudonym. Requests to substitute the prior name of the author or claimant with the current legal name of the author or claimant must be accompanied by official documentation of the legal name change.

(3) Requests for removal of PII from the online catalog must be in the form of an affidavit, must be accompanied by the non-refundable fee listed in § 201.3(c), and must include the following information:

(i) The copyright registration number(s).

(ii) The name of the author and/or claimant of record on whose behalf the request is made.

(iii) Identification of the specific PII that is to be removed.

(iv) If applicable, verifiable non-personally-identifiable substitute information that should replace the PII to be removed.

(v) In the case of requests to replace the names of authors or claimants, the request must be accompanied by a court order granting a legal name change.

(vi) A statement providing the reasons supporting the request. If the requester is not providing verifiable, non-personally-identifiable substitute information to replace the PII to be removed, this statement must explain in

detail the specific threat to the individual's personal safety or personal security, or other circumstances, supporting the request.

(vii) The statement, ''I declare under penalty of perjury that the foregoing is true and correct.''

(viii) If the submission is by an authorized representative of the author or claimant of record, an additional statement, ''I am authorized to make this request on behalf of [name of author or claimant of record].''

(ix) The signature of the author, claimant of record, or the authorized representative of the author or claimant of record.

(x) The date on which the request was signed.

(xi) A physical mailing address to which the Office's response may be sent (if no email is provided).

(xii) A telephone number.

(xiii) An email address (if available).

(4) Requests under this paragraph (e) must be sent to the Office as prescribed in § 201.1(c).

(5) A properly submitted request will be reviewed by the Associate Register of Copyrights and Director of the Office Public Information and Education or his or her designee(s) to determine whether the request should be granted or denied. The Office will send its decision to either grant or deny the request to the physical mail address or email address indicated in the request.

(6) If the request is granted, the Office will remove the information from the online public catalog. Where substitute information has been provided, the Office will add that information to the online public catalog. In addition, a note indicating that the online record has been modified will be added to the online registration record. A new certificate of registration will be issued that reflects the modified information. The Office will maintain a copy of the original registration record on file in the Copyright Office, and such records shall be open to public inspection and copying pursuant to paragraphs (b), (c), and (d) of this section. The Office will also maintain in its offline records the correspondence related to the request to remove PII.

(7) Requests for reconsideration of denied requests to remove PII from the online public catalog must be made in writing within 30 days from the date of the denial letter. The request for reconsideration, and a non-refundable fee in the amount specified in § 201.3(c), must be sent to the Office as prescribed in § 201.1(c). The request must specifically address the grounds for denial of the initial request. Only one request for reconsideration will be considered per denial.

(f) *Requests for removal of extraneous PII from the public record.* Upon written request, the Office will remove driver's license numbers, social security numbers, banking information, credit card information, and other extraneous PII that was erroneously included on a registration application from the public record. There is no fee for this service. To make a request, the author, claimant, or the authorized representative of the author or claimant, must submit the request in writing using the contact information listed in § 201.1(c). Such a request must name the author and/or claimant, provide the registration number(s) associated for the record in question, and give a description of the extraneous PII that is to be removed. Once the request is received, the Office will remove the extraneous information from both its online and offline public records. The Office will not include any notation of this action in its records.

[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; 69 FR 39332, June 30, 2004; 69 FR 70377, Dec. 6, 2004; 73 FR 37838, July 2, 2008; 78 FR 42873, July 18, 2013; 82 FR 9007, Feb. 2, 2017; 82 FR 9355, Feb. 6, 2017; 82 FR 21697, May 10, 2017; 85 FR 19667, Apr. 8, 2020; 87 FR 20713, Apr. 8, 2022]

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section and the Copyright Claims Board.

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

(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).

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

(c) *Registration, recordation, and related service fees.* The Copyright Office has established fees for these services. To calculate the fee specified by paragraph (c)(20) of this section, for each work identified in a document: The first title and/or first registration number provided for that particular work constitutes a work; and each additional title and registration number provided for that particular work beyond the first constitutes an alternate identifier. The fees are as follows:

TABLE 1 TO PARAGRAPH (c)

Registration, recordation, and related services	Fees ($)
(1) Registration of a claim in an original work of authorship:	
(i) Electronic filing:	
(A) Single author, same claimant, one work, not for hire	45
(B) All other filings	65
(ii) Paper Filing (Forms PA, SR, TX, VA, SE, SR)	125
(2) Registration of a claim in a group of contributions to periodicals	85
(3) Registration of updates or revisions to a database that predominantly consists of non-photographic works	500
(4) Registration of a claim in a group of published photographs or a claim in a group of unpublished photographs	55
(5) Registration for a database that predominantly consists of photographs and updates thereto:	
(i) Electronic filing	250
(ii) Paper filing	250
(6) Registration of a renewal claim (Form RE):	
(i) Claim without addendum	125
(ii) Addendum (in addition to the fee for the claim)	100
(7) Registration of a claim in a group of serials (per issue, minimum two issues):	
(i) Electronic filing	35
(ii) Paper filing	70
(8) Registration of a claim in a group of newspapers or a group of newsletters	95
(9) Registration of a group of works on an album	65
(10) Registration of a claim in a group of unpublished works	85
(11) Registration of a claim in a group of short online literary works	65
(12) Registration of a claim in a restored copyright (Form GATT)	100
(13) Preregistration of certain unpublished works	200
(14) Registration of a correction or amplification to a claim:	
(i) Supplementary registration:	
(A) Electronic filing	100
(B) Paper Filing for correction or amplification of renewal registrations, GATT registrations, and group registrations for non-photographic databases (Form CA)	150
(ii) Correction of a design registration: Form DC	100
(15) Registration of a claim in a mask work (Form MW)	150
(16) Registration of a claim in a vessel design (Form D/VH)	500
(17) Provision of an additional certificate of registration	55
(18) Certification of other Copyright Office records, including search reports (per hour)	200
(19) Search report prepared from official records other than Licensing Section records (per hour, 2 hour minimum)	200
(20) Estimate of retrieval or search fee (credited to retrieval or search fee)	200
(21) Retrieval of in-process or completed Copyright Office records or other Copyright Office materials:	
(i) Retrieval of paper records (per hour, 1 hour minimum)	200
(ii) Retrieval of digital records (per hour, half hour minimum, quarter hour increments)	200
(22) Recordation of a document, including a notice of termination and a notice of intention to enforce a restored copyright:	
(i) Base fee (includes 1 work identified by 1 title and/or registration number):	
(A) Paper	125
(B) Electronic	95
(ii) Additional transfer (per transfer) (for documents recorded under 17 U.S.C. 205)	95
(iii) Additional works and alternate identifiers:	
(A) Paper (per group of 10 or fewer additional works and alternate identifiers)	60
(B) Electronic:	
(1) 1 to 50 additional works and alternate identifiers	60
(2) 51 to 500 additional works and alternate identifiers	225

TABLE 1 TO PARAGRAPH (c)—Continued

Registration, recordation, and related services	Fees ($)
(3) 501 to 1,000 additional works and alternate identifiers	390
(4) 1,001 to 10,000 additional works and alternate identifiers	555
(5) 10,001 or more additional works and alternate identifiers	5,500
(iv) Correction of online Public Catalog data due to erroneous electronic title submission (per title)	7
(23) Designation of agent under 17 U.S.C. 512(c)(2) to receive notification of claimed infringement, or amendment or resubmission of designation	6
(24)(i) Schedule of pre-1972 sound recordings, or supplemental schedule of pre-1972 sound recordings (single sound recording)	75
(ii) Additional sound recordings (per group of 1 to 100 sound recordings)	10
(25) Removal of pre-1972 sound recording from Office's database of indexed schedules (single sound recording)	75
(26) Notice of noncommercial use of pre-1972 sound recording	50
(27) Opt-out notice of noncommercial use of pre-1972 sound recording	50
(28) Issuance of a receipt for a section 407 deposit	30
(29) Removal of PII from Registration Records:	
(i) Initial request, per registration record	100
(ii) Reconsideration of denied requests, flat fee	60

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

TABLE 2 TO PARAGRAPH (d)

Special services	Fees ($)
(1) Service charge for deposit account overdraft	285
(2) Service charge for dishonored deposit account replenishment check	500
(3) Service charge for an uncollectible or non-negotiable payment	115
(4) Appeals:	
(i) First appeal (per claim)	350
(ii) Second appeal (per claim)	700
(5) Secure test examining fee (per staff member per hour)	250
(6) Copying of Copyright Office records by staff	12
(7)(i) Special handling fee for a claim	800
(ii) Handling fee for each non-special handling claim using the same deposit	50
(8) Small claims expedited registration fee per registration application request	50
(9) Special handling fee for recordation of a document	550
(10) Handling fee for extra deposit copy for certification	50
(11) Full-term retention of a published deposit:	
(i) Physical deposit	540
(ii) Electronic deposit	220
(12) Voluntary cancellation of registration	150
(13) Matching unidentified deposit to deposit ticket claim	40
(14) Special handling fee for records retrieval, search, and certification services (per hour, 1 hour minimum)	500
(15) Litigation statement (Form LS)	100
(16)(i) Notice to libraries and archives	50
(ii) Each additional title	20
(17) Service charge for Federal Express mailing	45
(18) Service charge for delivery of documents via facsimile (per page, 7 page maximum)	1

(e) *Licensing Section service fees*. The Copyright Office has established the following fees for specific services of the Licensing Section:

TABLE 3 TO PARAGRAPH (e)

Licensing section services	Fees ($)
(1)(i) Recordation of a notice of intention to make and distribute phonorecords (17 U.S.C. 115)	75
(ii) Additional titles (per group of 1 to 10 titles) (paper filing)	20
(iii) Additional titles (per group of 1 to 100 titles) (online filing)	10
(2) Statement of account amendment (cable television systems and satellite carriers, 17 U.S.C. 111 and 119; digital audio recording devices or media, 17 U.S.C. 1003)	50

TABLE 3 TO PARAGRAPH (e)—Continued

Licensing section services	Fees ($)
(3) Recordation of certain contracts by cable TV systems located outside the 48 contiguous states	50
(4) Initial or amended notice of digital transmission of sound recording (17 U.S.C. 112, 114)	50
(5) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 111:	
(i) Form SA1	15
(ii) Form SA2	20
(iii) Form SA3	725
(6) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 119 or 122	725
(7) Search report prepared from Licensing Section records (per hour, 2 hour minimum)	200

(f) *Fees for travel in connection with educational activities.* For travel expenses in connection with Copyright Office educational activities when participation by Copyright Office personnel has been requested by another organization or person and that organization or person has agreed to pay such expenses, collection of the fee shall be subject to, and the amount of the fee shall be no greater than, the amount authorized under the Federal Travel Regulations found in Chapters 300 through 304 of Title 41.

(g) *Copyright Claims Board fees.* The Copyright Office has established the following fees for specific services related to the Copyright Claims Board:

TABLE 4 TO PARAGRAPH (g)

Copyright Claims Board fees	Fees ($)
(1) Initiate a proceeding before the Copyright Claims Board:.	
(i) First payment	40
(ii) Second payment	60
(2) Designation of a service agent by a corporation, partnership, or unincorporated association under 17 U.S.C. 1506(g)(5)(B), or amendment of designation	6
(3) Filing fee for review of a final CCB determination by the Register	300

[64 FR 29520, June 1, 1999, as amended at 64 FR 36574, July 7, 1999; 65 FR 39819, June 28, 2000; 67 FR 38005, May 31, 2002; 71 FR 31090, June 1, 2006; 71 FR 46402, Aug. 14, 2006; 72 FR 33691, June 19, 2007; 74 FR 12556, Mar. 25, 2009, 74 FR 32807, July 9, 2009; 77 FR 18705, Mar. 28, 2012; 77 FR 18707, Mar. 28, 2012; 78 FR 71501, Nov. 29, 2013; 79 FR 15918, Mar. 24, 2014; 79 FR 24334, Apr. 30, 2014; 79 FR 68623, Nov. 18, 2014; 81 FR 75707, Nov. 1, 2016; 82 FR 9008, Feb. 2, 2017; 82 FR 9356, Feb. 6, 2017; 82 FR 26853, June 12, 2017; 82 FR 29413, June 29, 2017; 82 FR 52223, Nov. 13, 2017; 83 FR 2547, Jan. 18, 2018; 83 FR 4146, Jan. 30, 2018; 83 FR 52153, Oct. 16, 2018; 83 FR 61549, Nov. 30, 2018; 83 FR 66628, Dec. 27, 2018; 84 FR 3697, Feb. 13, 2019; 84 FR 10684, Mar. 22, 2019; 84 FR 14255, Apr. 9, 2019; 84 FR 20273, May 9, 2019; 85 FR 9386, Feb. 19, 2020; 85 FR 37346, June 22, 2020; 86 FR 10825, Feb. 23, 2021; 86 FR 32641, June 22, 2021; 86 FR 46122, Aug. 18, 2021; 87 FR 12865, Mar. 8, 2022; 87 FR 17000, Mar. 25, 2022; 87 FR 24056, 24058, Apr. 22, 2022; 87 FR 30075, May 17, 2022]

§ 201.4 Recordation of transfers and other documents pertaining to copyright.

(a) *General.* This section prescribes conditions for the recordation of transfers of copyright ownership and other documents pertaining to a copyright under 17 U.S.C. 205. Except as otherwise provided pursuant to paragraph (h) of this section, a document is eligible for recordation under this section if it meets the requirements of paragraph (d) of this section, if it is submitted in accordance with the submission procedure described in paragraph (e) of this section, and if it is accompanied by the fee specified in §201.3(c). The date of recordation is the date when all of the elements required for recordation, including a proper document, fee, and any additional required information, are received in the Copyright Office. After recordation the document is returned to the sender with a certificate

of recordation. The Office may reject any document submitted for recordation that fails to comply with 17 U.S.C. 205, the requirements of this section, or any relevant instructions or guidance provided by the Office.

(b) *Documents not recordable under this section.* This section does not govern the filing or recordation of the following documents:

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

(2) Notices of identity and signal carriage complement, and statements of account of cable systems and satellite carriers and for digital audio recording devices and media (17 U.S.C. 111(d), 119(b), and 1003(c); see §§ 201.11, 201.17, 201.28);

(3) Notices of use of sound recordings under statutory license and notices of intention to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works (17 U.S.C. 112(e), 114, and 115(b); see §§ 201.18 and 370.2);

(4) Notices of termination (17 U.S.C. 203, 304(c) and (d); see § 201.10);

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

(6) Documents pertaining to computer shareware and donation of public domain software (Pub. L. 101–650, sec. 805; see § 201.26);

(7) Notifications from the clerks of the courts of the United States concerning actions brought under title 17, United States Code (17 U.S.C. 508);

(8) Notices to libraries and archives of normal commercial exploitation or availability at reasonable prices (17 U.S.C. 108(h)(2)(C); see § 201.39);

(9) Submission of Visual Arts Registry Statements (17 U.S.C. 113; see § 201.25);

(10) Notices and correction notices of intent to enforce restored copyrights (17 U.S.C. 104A(e); see §§ 201.33, 201.34);

(11) Designations of agents to receive notifications of claimed infringement (17 U.S.C. 512(c)(2); see § 201.38);

(12) Notices of contact information for transmitting entities publicly performing pre-1972 sound recordings by means of digital audio transmission (17 U.S.C. 1401(f)(5)(B); see § 201.36);

(13) Schedules of pre-1972 sound recordings (17 U.S.C. 1401(f)(5)(A); see § 201.35);

(14) Notices of noncommercial use of pre-1972 sound recordings (17 U.S.C. 1401(c)(1)(B); see § 201.37); and

(15) Opt-out notices of noncommercial use of pre-1972 sound recordings (17 U.S.C. 1401(c)(1)(C); see § 201.37).

(c) *Definitions.* For purposes of this section:

(1) A *transfer of copyright ownership* has the meaning set forth in 17 U.S.C. 101.

(2) A *document pertaining to a copyright* is any document that has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

(3) An *actual signature* is any legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006.

(4) A *sworn certification* is a statement made in accordance with 28 U.S.C. 1746 that the copy of the document submitted for recordation is, to the best of the certifier's knowledge, a true copy of the original, signed document. A sworn certification must be signed by one of the parties to the signed document, a successor-in-interest to one of the parties to the signed document, or the authorized representative of such a party or successor. Authorized representatives must state who they represent and successors-in-interest must describe their relationship to the document or the original parties to the document. An authorized representative of a successor-in-interest must describe the successor's relationship to the document or the original parties to the document. A sworn certification may be signed electronically.

(5) An *official certification* is a certification, by the appropriate governmental official, that the original of the document is on file in a public office and that the copy of the document submitted for recordation is a true copy of the original. An official certification may be signed electronically.

(d) *Document requirements*—(1) *Original or certified copy*. The remitter must submit either the original document that bears the actual signature(s) of the person(s) who executed it, or a copy of the original, signed document accompanied by a sworn certification or an official certification. Each document submitted for recordation must be certified to either have the actual signature(s) (if it is an original document) or reproduce the actual signature(s) (in the case of a copy of the original document). All documents lacking a handwritten, wet signature (including all documents bearing an electronic signature) are considered to be copies of the original, signed document, and must be accompanied by a sworn certification or an official certification. Where an actual signature on the relevant document is not a handwritten or typewritten name, such as when an individual clicks a button on a Web site or application to indicate agreement to contractual terms, the remitter must submit a description of the nature of the signature and documentation evidencing the existence of the signature (*e.g.*, a database entry or confirmation email showing that a particular user agreed to the terms by clicking ''yes'' on a particular date). Where such description and evidence are provided, the Office will make them available for public inspection and may presume that the signature requirement for recordation has been satisfied, without prejudice to any party claiming otherwise, including before a court of competent jurisdiction.

(2) *Completeness*. Each document submitted for recordation must be, and be certified to be, complete by its terms, but need only include referenced schedules, appendices, exhibits, addenda, or other material essential to understanding the copyright-related aspects of the document.

(3) *Legibility*. Each document submitted for recordation must be, and be certified to be, legible.

(4) *Redactions*. The Office will accept and make available for public inspection redacted documents certified to be redacted in accordance with this paragraph (d)(4), provided that all of the following conditions are satisfied:

(i) The redactions must be limited to financial terms, trade secret information, Social Security or taxpayer-identification numbers, and financial account numbers. Additional types of information may be redacted on a case-by-case basis if the need for any such redactions is justified to the Office in writing and approved by the Office; such written requests should be included in the remitter's recordation submission to the Office.

(ii) The blank or blocked-out portions of the document must be labeled ''redacted'' or the equivalent.

(iii) Each portion of the document required by paragraph (d)(2) of this section must be included.

(5) *English language requirement*. The Office will accept and record non-English language documents and indexing information only if accompanied by an English translation that is either signed by the individual making the translation or, if a publicly available commercial or consumer translation software product or automated service is used, by the individual using such product or service and accompanied by the name of the product or service. All translations will be made available for public inspection and may be redacted in accordance with paragraph (d)(4) of this section.

(e) *Paper submission procedure*—(1) *Process*. A document may be submitted for recordation by sending it to the appropriate address in § 201.1(b) or to such other address as the Office may specify, accompanied by a cover sheet, the proper fee, and, if applicable, any electronic title list. Absent special arrangement with the Office, the Office reserves the right to not process the submission unless all of the items necessary for processing are received together.

(2) *Cover sheet required*. Submission of a document must include a completed Recordation Document Cover Sheet (Form DCS), available on the Copyright Office Web site. Remitters must follow all instructions provided by the Office in completing Form DCS, including by providing all requested indexing information. Form DCS may be used to provide a sworn certification, if appropriate, and to make any of the other certifications required by this section.

Form DCS will not be considered part of the recorded document, but will be used by the Office for examination, indexing, and other administrative purposes. The Office may reject any document submitted for recordation that includes an improperly prepared cover sheet.

(3) *Electronic title list.* (i) In addition to identifying the works to which a document pertains in the paper submission, the remitter may also submit an electronic list setting forth each such work. The electronic list will not be considered part of the recorded document, but will be used by the Office for indexing purposes. Absent special arrangement with the Office, the electronic list must be included in the same package as the paper document to be recorded. The electronic list must be prepared and submitted to the Office in the manner specified by the Copyright Office in instructions made available on its Web site. The Office may reject any document submitted for recordation that includes an improperly prepared electronic title list.

(ii) If a remitter of a recorded document finds that an error or omission in an electronic title list has led to the inaccurate indexing of the document in the public catalog, the remitter may request that the record be corrected by following the instructions provided by the Office on its Web site. Upon receipt of a properly prepared corrective filing and the appropriate fee, the Office will proceed to correct the information in the public catalog, and will make a note in the record indicating that the corrections were made and the date they were made.

(4) *Return receipt.* If a remitter includes two copies of a properly completed Form DCS indicating that a return receipt is requested, as well as a self-addressed, postage-paid envelope, the remitter will receive a date-stamped return receipt attached to the extra copy acknowledging the Copyright Office's receipt of the enclosed submission. The completed copies of Form DCS and the self-addressed, postage-paid envelope must be included in the same package as the submitted document. A return receipt confirms the Office's receipt of the submission as of the date indicated, but does not establish eligibility for, or the date of, recordation.

(5) *Remitter certification.* The remitter must certify that he or she has appropriate authority to submit the document for recordation and that all information submitted to the Office by the remitter is true, accurate, and complete to the best of the remitter's knowledge.

(f) *Reliance on remitter-provided information.* The Copyright Office will rely on the certifications submitted with a document and the information provided by the remitter on Form DCS and, if provided, in an accompanying electronic title list. The Office will not necessarily confirm the accuracy of such certifications or information against the submitted document.

(g) *Effect of recordation.* The fact that the Office has recorded a document is not a determination by the Office of the document's validity or legal effect. Recordation of a document by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for recordation have not been met, including before a court of competent jurisdiction.

(h) *Pilot program for electronic submission.* The Copyright Office is implementing a limited pilot program through which certain types of documents may be electronically submitted for recordation online by certain remitters (''pilot remitters''). This paragraph (h) shall govern such submissions to the extent they are permitted under the pilot program.

(1) *Electronic submission.* Pilot remitters may submit permitted types of documents for recordation using the Copyright Office's electronic system pursuant to this section and special pilot program rules provided to pilot remitters by the Office.

(2) *Participation.* No remitter may participate in the pilot program without the permission of the Copyright Office. Participation in the pilot program is optional and pilot remitters may continue to submit documents for recordation pursuant to paragraph (e) of this section.

(3) *Conflicting rules.* To the extent any special pilot program rule conflicts with this section or any other regulation, rule, instruction, or guidance

issued by the Copyright Office, such pilot program rule shall govern submissions made pursuant to the pilot program.

(4) *Reliance on remitter-provided information.* Paragraph (f) of this section shall apply to all certifications and information provided to the Office through the electronic system.

(5) *Date of recordation.* In any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, if due to an issue with the electronic system, the Office may assign an equitable date as the date of recordation.

[82 FR 52219, Nov. 13, 2017, as amended at 83 FR 52153, Oct. 16, 2018; 84 FR 14255, Apr. 9, 2019; 85 FR 3855, Jan. 23, 2020]

§ 201.5 [Reserved]

§ 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 U.S. Copyright Office. 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.* (1) Persons or firms having 12 or more transactions a year with the Copyright Office may prepay copyright expenses by establishing a Deposit Account. The Office and the Deposit Account holder will cooperatively determine an appropriate minimum balance for the Deposit Account which, in no case, can be less than $450, and the Office will automatically notify the Deposit Account holder when the account goes below that balance.

(2) The Copyright Office will close a Deposit Account the second time the Deposit Account holder overdraws his or her account within any 12-month period. An account closed for this reason can be re-opened only if the holder elects to fund it through automatic replenishment.

(3) In order to ensure that a Deposit Account's funds are sufficiently maintained, a Deposit Account holder may authorize the Copyright Office to automatically replenish the account from the holder's bank account or credit card. The amount by which a Deposit Account will be replenished will be determined by the deposit account holder. Automatic replenishment will be triggered when the Deposit Account goes below the minimum level of funding established pursuant to paragraph (b)(1) of this section, and Deposit Account holders will be automatically notified that their accounts will be replenished.

(c) *Refunds.* (1) Money remitted to the Copyright Office for basic, supplementary or renewal registration, including mask works and vessel designs, 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 fee will be refunded, but amounts of $50 or less will not be refunded unless specifically requested. Except for services specified in paragraphs (c)(2) and (3) of this section, before making any refund for fees remitted in relation to non-registration 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 charge for the service.

(2) In instances where money has been remitted to pay for recordation of a document, and it is determined that the document cannot be recorded, the basic recordation fee covering one title will be retained as a filing fee. Any additional money over the basic fee for one title will be refunded, but amounts of $50 or less will not be refunded unless specifically requested.

(3) For services where fees are calculated on an hourly basis, such as

preparation of a search report, certification of certain Copyright Office records, or location and retrieval of records, in instances where the request is withdrawn before work is begun by the staff member responsible for providing the service, the Copyright Office will retain half of the hourly charge for administrative expenses, and refund the remaining portion of the fee subject to paragraph (c)(1) of this section. In addition, the fee for an estimate of a search fee is non-refundable. This policy applies to requests to the Records Research and Certification Section, and requests to the Licensing Section.

(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 use in 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; 74 FR 32809, July 9, 2009; 76 FR 9231, Feb. 17, 2011; 82 FR 9356, Feb. 6, 2017; 86 FR 32642, June 22, 2021]

§ 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 insufficiently creative 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 sent, 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 U.S. copyright law, 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 applicant 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 sent, 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 examples of 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) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified.

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

(xi) The requirements for registering a group of related works under section 408(c) of title 17 of the United States Code have not been met.

(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 applicant. 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; 65 FR 39819, June 28, 2000; 66 FR 34372, June 28, 2001; 82 FR 9356, Feb. 6, 2017; 82 FR 29413, June 29, 2017; 85 FR 19667, Apr. 8, 2020]

§ 201.8 Disruption of postal or other transportation or communication services.

(a) *Declaration of disruption.* For purposes of 17 U.S.C. 709, when the Register has determined that there is or has been a general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, that has delayed the receipt by the Copyright Office of applications, fees, deposits, or any other materials, the Register shall publish an announcement of that determination, stating the date on which the disruption or suspension commenced. The announcement may, if appropriate, limit the means of delivery that are subject to relief pursuant to section 709. Following the cessation of the disruption or suspension of services, the Register shall publish an announcement stating the date on which the disruption or suspension has terminated, and may provide specific instructions on how to make a request under paragraph (b)(1) of this section.

(b) *Request for earlier filing date due to disruption*—(1) *When the Register has declared a disruption.* When the Register has made a declaration of disruption

under paragraph (a) of this section, any person who, in compliance with any instructions provided by the Register, provides satisfactory evidence as described in paragraph (e) of this section that he or she attempted to deliver an application, fee, deposit, or other material to the Copyright Office, but that receipt by the Copyright Office was delayed due to a general disruption or suspension of postal or other transportation or communications services announced under paragraph (a), shall be assigned, as the date of receipt of the application, fee, deposit, or other material, the date on which the Register determines the material would have been received but for the disruption or suspension of services, so long as the application, fee, deposit, or other material was actually received in the Copyright Office within one month after the date the Register identifies pursuant to paragraph (a) of this section that disruption or suspension of services has terminated. Such requests should be mailed to the address specified in § 201.1(c)(1), or through any other delivery method the Register specifies in a published announcement under paragraph (a) of this section.

(2) *With respect to disruption affecting specific submission.* In the absence of a declaration of disruption under paragraph (a) of this section, any person who provides satisfactory evidence as described in paragraph (e) of this section that he or she physically delivered or attempted to physically deliver an application, fee, deposit, or other material to the Copyright Office, but that the Office did not receive that material or that it was lost or misplaced by the Office after its delivery to the Office, shall be assigned, as the date of receipt, the date that the Register determines that the material was received or would have been received. Such requests may be mailed to the address specified in § 201.1(c)(1), or through any other delivery method specified by the Copyright Office.

(c) *Timing.* (1) A request under paragraph (b)(1) of this section shall be made no earlier than the date on which the Register publishes the announcement under paragraph (a) of this section declaring that the disruption or suspension has terminated, and no later than one year after the publication of that announcement.

(2) A request under paragraph (b)(2) of this section shall be made no later than one year after the person physically delivered or attempted to physically deliver the application, fee, deposit, or other material to the Copyright Office.

(d) *Return of certificate.* In cases where a certificate of registration or a certificate of recordation has already been issued, the original certificate must be returned to the Copyright Office along with the request under paragraph (b) of this section.

(e) *Satisfactory evidence.* In all cases the Register shall have discretion in determining whether materials submitted with a request under paragraph (b) of this section constitute satisfactory evidence. For purposes of paragraph (b) of this section, satisfactory evidence may include:

(1) A receipt from the United States Postal Service indicating the date on which the United States Postal Service received material for delivery to the Copyright Office by means of first class mail, Priority Mail, or Express Mail;

(2) A receipt from a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, indicating the date on which the delivery service received material for delivery to the Copyright Office; and

(i) The date on which delivery was to be made to the Copyright Office, or

(ii) The period of time (*e.g.*, overnight, or two days) from receipt by the delivery service to the date on which delivery was to be made to the Copyright Office;

(3) A statement under penalty of perjury, pursuant to 28 U.S.C. 1746, from a person with actual knowledge of the facts relating to the attempt to deliver the material to the Copyright Office, setting forth with particularity facts which satisfy the Register that in the absence of the general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, or but for the misdelivery, misplacement, or loss of materials sent to the Copyright Office, the material would have

been received by the Copyright Office by a particular date; or

(4) Other documentary evidence which the Register deems equivalent to the evidence set forth in paragraphs (e)(1) and (2) of this section.

(f) *Presumption of receipt.* For purposes of paragraph (b) of this section, the Register shall presume that but for the general disruption or suspension of postal or other transportation or communications services, including a disruption or suspension of a Copyright Office electronic system, or but for the misdelivery, misplacement, or loss of materials sent to the Copyright Office:

(1) Materials deposited with the United States Postal Service for delivery by means of first class mail would have been received in the Copyright Office seven days after deposit with the United States Postal Service;

(2) Materials deposited with the United States Postal Service for delivery by means of Priority Mail would have been received in the Copyright Office three days after deposit with the United States Postal Service;

(3) Materials deposited with the United States Postal Service for delivery by means of Express Mail would have been received in the Copyright Office one day after deposit with the United States Postal Service;

(4) Materials deposited with a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, would have been received in the Copyright Office on the date indicated on the receipt from the delivery service;

(5) Materials submitted or attempted to be submitted through a Copyright Office electronic system would have been received in the Copyright Office on the date the attempt was made. If it is unclear when an attempt was made, the Register will determine the effective date of receipt on a case-by-case basis.

[66 FR 62944, Dec. 4, 2001; 66 FR 63920, Dec. 11, 2001; 73 FR 37838, July 2, 2008; 78 FR 42874, July 18, 2013; 82 FR 9356, Feb. 6, 2017; 82 FR 22887, May 19, 2017]

§ 201.9 [Reserved]

§ 201.10 Notices of termination of transfers and licenses.

This section covers notices of termination of transfers and licenses under 17 U.S.C. 203, 304(c), and 304(d). A termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939.

(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 covering the extended renewal term under 17 U.S.C. 304(c) and 304(d) must include a clear identification of each of the following:

(i) Whether the termination is made under section 304(c) or under section 304(d);

(ii) 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;

(iii) 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;

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

(v) The effective date of termination;

(vi) If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised; and

(vii) 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 (vii), 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 17 U.S.C. 304, or by their duly authorized agents.

(2) A notice of termination of an exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, under 17 U.S.C. 203, must include a clear identification of each of the following:

(i) A statement that the termination is made under section 203;

(ii) 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;

(iii) The date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant;

(iv) For each work to which the notice of termination applies, the title of the work and the name of the author or, in the case of a joint work, the authors who executed the grant being terminated; and, if possible and practicable, the original copyright registration number;

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

(vi) The effective date of termination; and

(vii) 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 (b)(2)(vii), 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 17 U.S.C. 203, or by their duly authorized agents.

(3) Clear identification of the information specified by paragraphs (b)(1) and (b)(2) 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 under section 304(c) or section 304(d) 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 under section 304(c) or section 304(d) 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 17 U.S.C. 304(c) or 304(d), whichever applies, or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) In the case of a termination of a grant under section 203 executed by one or more of the authors of the work, the notice shall be signed by each author who is terminating the grant 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 17 U.S.C. 203, or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

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

(5) 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:

(i) Personal service;

(ii) First class mail sent or by reputable courier service delivered to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title; or

(iii) Means of electronic transmission to:

(A) An email address designated for service of notices of termination and/or legal process that is listed as such on the website of the grantee or successor in title in a location accessible to the public;

(B) An email address provided to the terminating party by the grantee or successor in title, provided that the grantee, successor in title, or an agent thereof who is duly authorized to accept service on behalf of the grantee or successor in title expressly consents in writing to accept service at the address provided within thirty days before such service is made; or

(C) An email address for the grantee or successor in title provided in accordance with instructions provided on the Office's website in a public directory that the Office in its discretion may establish and maintain.

(2) The service provision of 17 U.S.C. 203, 304(c), or 304(d), whichever applies, 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 paragraphs (d)(2) and (d)(3) of this section will satisfy the service requirements of 17 U.S.C. 203, 304(c), or 304(d), whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) *Harmless errors.* (1) Harmless errors in a notice, statement of service, or indexing information provided electronically or in a cover sheet shall not render the notice invalid. For purposes of this paragraph, an error is ''harmless'' if it does not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 203, 304(c), or 304(d), whichever applies.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or

(b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) 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.* Except as otherwise provided pursuant to paragraph (f)(6) of this section, a copy of a notice of termination shall be recorded in the Copyright Office as required by 17 U.S.C. 203(a)(4)(A), 17 U.S.C. 304(c)(4)(A), or 17 U.S.C. 304(d)(1) if it meets the requirements of paragraph (f)(1) of this section, is submitted in compliance with paragraph (f)(2) of this section, and is accompanied by the fee specified in § 201.3(c). The Office may reject any notice submitted for recordation that fails to comply with 17 U.S.C. 203(a), 17 U.S.C. 304(c), 17 U.S.C. 304(d), the requirements of this section, or any relevant instructions or guidance provided by the Office.

(1) *Requirements.* The following requirements must be met before a copy of a notice of termination may be recorded in the Copyright Office.

(i) *What must be submitted*—(A) *Copy of notice of termination.* A copy of a notice of termination submitted for recordation must be, and be certified to be, a true, correct, complete, and legible copy of the signed notice of termination as served. 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.

(B) *Statement of service.* The copy submitted for recordation must 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. In instances where service is made by first class mail, the date of service shall be the day the notice of termination was deposited with the United States Postal Service.

(ii) *Timeliness.* (A) The Copyright Office may refuse recordation of a notice of termination as such if, in the judgment of the Copyright Office, such notice of termination is untimely. Conditions under which a notice of termination may be considered untimely include: the effective date of termination does not fall within the five-year period described in section 203(a)(3) or section 304(c)(3), as applicable, of title 17, United States Code; the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination; or the date of recordation is on or after the effective date of termination.

(B) If a notice of termination is untimely, the Office will offer to record the document as a ''document pertaining to a copyright'' pursuant to § 201.4, but the Office will not index the document as a notice of termination.

(C) In any case where an author agreed, prior to January 1, 1978, to a grant of a transfer or license of rights in a work that was not created until on or after January 1, 1978, a notice of termination of a grant under section 203 of title 17 may be recorded if it recites, as the date of execution, the date on which the work was created.

(2) *Paper submission procedure*—(i) *Process.* A copy of a notice of termination may be submitted for recordation by sending it to the appropriate address in § 201.1(c) or to such other address as the Office may specify, accompanied by a cover sheet, the statement of service, and the proper fee.

(ii) *Cover sheet required.* Submission of a copy of a notice of termination must be accompanied by a completed Recordation Notice of Termination Cover Sheet (Form TCS), available on the Copyright Office Web site. Remitters must follow all instructions provided by the Office in completing Form TCS, including by providing all requested indexing information. Form TCS may be used to provide the statement of service and to make any of the certifications required by this paragraph (f). Form TCS will not be considered part of the recorded notice, but will be used by the Office for examination, indexing, and other administrative purposes. The Office may reject any notice submitted for recordation that includes an improperly prepared cover sheet.

(iii) *Return receipt.* If a remitter includes two copies of a properly completed Form TCS indicating that a return receipt is requested, as well as a self-addressed, postage-paid envelope, the remitter will receive a date-stamped return receipt attached to the extra copy acknowledging the Copyright Office's receipt of the enclosed submission. The completed copies of Form TCS and the self-addressed, postage-paid envelope must be included in the same package as the submitted notice. A return receipt confirms the Office's receipt of the submission as of the date indicated, but does not establish eligibility for, or the date of, recordation.

(iv) *Remitter certification.* The remitter must certify that he or she has appropriate authority to submit the notice for recordation and that all information submitted to the Office by the remitter is true, accurate, and complete to the best of the remitter's knowledge.

(3) *Date of recordation.* The date of recordation is the date when a copy of the notice of termination is received in the Copyright Office. After recordation, the notice, including any accompanying statement, is returned to the sender with a certificate of recordation.

(4) *Effect of recordation.* The fact that the Office has recorded a notice is not a determination by the Office of the notice's validity or legal effect. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for effectuating termination (including the requirements pertaining to service and recordation of the notice of termination) have not been met, including before a court of competent jurisdiction.

(5) *Reliance on remitter-provided information.* The Copyright Office will rely on the certifications submitted with a notice and the information provided by the remitter on Form TCS and, if provided, in an accompanying statement of service. The Office will not necessarily confirm the accuracy of such certifications or information against the submitted notice.

(6) *Pilot program for electronic submission.* The Copyright Office is implementing a limited pilot program through which certain types of documents may be electronically submitted for recordation online by certain remitters (''pilot remitters''). This paragraph (f)(6) shall govern such submissions for notices of termination to the extent they are permitted under the pilot program.

(i) *Electronic submission.* Pilot remitters may submit permitted types of notices for recordation using the Copyright Office's electronic system pursuant to this section and special pilot program rules provided to pilot remitters by the Office.

(ii) *Participation.* No remitter may participate in the pilot program without the permission of the Copyright Office. Participation in the pilot program is optional and pilot remitters may continue to submit notices for recordation pursuant to paragraph (f)(2) of this section.

(iii) *Conflicting rules.* To the extent any special pilot program rule conflicts with this section or any other regulation, rule, instruction, or guidance issued by the Copyright Office, such pilot program rule shall govern submissions made pursuant to the pilot program.

(iv) *Reliance on remitter-provided information.* Paragraph (f)(5) of this section shall apply to all certifications and information provided to the Office through the electronic system.

(v) *Date of recordation.* In any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, if due to an issue with the electronic system, the Office may assign an equitable date as the date of recordation.

(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; 64 FR 36574, July 7, 1999; 66 FR 34372, June 28, 2001; 67 FR 69136, Nov. 15, 2002; 67 FR 78176, Dec. 23, 2002; 68 FR 16959, Apr. 8, 2003; 71 FR 36486, June 27, 2006; 74 FR 12556, Mar. 25, 2009; 76 FR 32320, June 6, 2011; 78 FR 42874, July 18, 2013; 82 FR 9356, Feb. 6, 2017; 82 FR 52220, Nov. 13, 2017; 85 FR 3855, Jan. 23, 2020; 86 FR 11641, Feb. 26, 2021]

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

(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 17 U.S.C. 119(b)(1), as amended by Public Law 111–175, in order for certain secondary transmissions by satellite carriers for private home viewing to be subject to statutory licensing.

(b) *Definitions.* (1) The terms *distributor*, *network station*, *private home viewing*, *satellite carrier*, *subscribe*, *subscriber*, *non-network station*, *unserved household*, *primary stream*, and *multicast stream*, have the meanings set forth in 17 U.S.C. 119(d), as amended by Public Law 111–175.

(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 17 U.S.C. 119(b)(1)(B), by no later than July 30, if the Statement of Account covers the January 1 through June 30 accounting period, and by no 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 Section 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 from the Copyright Office website.

(2) The form prescribed by the Copyright Office is designated '' Form SC (Statement of Account for Secondary Transmissions by Satellite Carriers of Distant Television Signals).''

(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 ''non-network station'' 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 ''non-network station,'' followed by:

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

(ii) The total number of subscribers to each non-network station for each month of the period covered by the Statement. This number is the number of subscribers to each non-network station 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 non-network station for the six-month period covered by the Statement multiplied by the statutory royalty rate prescribed in § 386.2 of this chapter.

(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 prescribed in § 386.2 of this chapter.

(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) A legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, 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.* (1) All royalty fees shall be paid by electronic funds transfer and payment must be received in the designated bank by the filing deadline for the relevant accounting period. The following information shall be provided as part of the EFT and/or

as part of the remittance advice as provided for in circulars issued by the Copyright Office:

(i) Remitter's name and address;

(ii) Name of a contact person, telephone number and extension, and email address;

(iii) The actual or anticipated date that the EFT will be transmitted;

(iv) Type of royalty payment (*i.e.*, satellite);

(v) Total amount submitted via the EFT;

(vi) Total amount to be paid by year and period;

(vii) Number of Statements of Account that the EFT covers;

(viii) ID numbers assigned by the Licensing Section;

(ix) Legal name of the owner for each Statement of Account.

(2) The remittance advice shall be attached to the Statement(s) of Account. In addition, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Section.

(3) The Office may waive the requirement for payment by electronic funds transfer as set forth in paragraph (f)(1) of this section. To obtain a waiver, the remitter shall submit to the Licensing Section at least 60 days prior to the royalty fee due date a certified statement setting forth the reasons explaining why payment by an electronic funds transfer would be virtually impossible or, alternatively, why it would impose a financial or other hardship on the remitter. The certified statement must be signed by a duly authorized representative of the entity making the payment. A waiver shall cover only a single payment period. Failure to obtain a waiver may result in the remittance being returned to the remitter.

(g) *Copies of statements of account.* A licensee shall file an original and one copy of the statement of account with the Licensing Section of the Copyright Office.

(h) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (h)(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 (h)(1) of this section. Such requests shall be addressed to the Licensing Section 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. Telephone or similar 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 thirty-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 (h)(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; or

(B) In the case of a request filed under paragraph (h)(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 (h) 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.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (h) 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 (h) 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 Section, 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 Section 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 (h)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (h) 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.

(i) *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 and viewing in commercial establishments occurring within that accounting period. The accrual period shall end on the date the electronic payment submitted by a satellite carrier is received by the Copyright Office. In cases where a waiver of the electronic funds transfer requirement is approved by the Copyright Office, and royalties payments are either late or underpaid, the accrual period shall end on the date the payment is postmarked. 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 the 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. Satellite carriers 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 Section 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 Section 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; 64 FR 36574, July 7, 1999; 70 FR 30366, May 26, 2005; 70 FR 38022, July 1, 2005; 71 FR 45739, Aug. 10, 2006; 72 FR 33691, June 19, 2007; 73 FR 29072, May 20, 2008; 75 FR 56872, Sept. 17, 2010; 78 FR 42874, July 18, 2013; 82 FR 9357, Feb. 6, 2017; 83 FR 51841, Oct. 15, 2018; 85 FR 19667, Apr. 8, 2020; 86 FR 32642, June 22, 2021]

§ 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 17 U.S.C. 111(e)(2), will be filed in the Copyright Office Licensing Section 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 copy of an original, accompanied by a certification that shall include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of 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, appendixes, 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(e).

(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 recordation.

(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; 82 FR 9357, Feb. 6, 2017; 85 FR 19667, Apr. 8, 2020; 86 FR 32642, June 22, 2021]

§ 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 17 U.S.C. 110(4), 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 an email, fax, 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 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) Email, fax, 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, as amended at 82 FR 9357, Feb. 6, 2017]

§ 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 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 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 eight 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, as amended at 82 FR 9357, Feb. 6, 2017]

§ 201.15 [Reserved]

§ 201.16 Verification of a Statement of Account for secondary transmissions made by cable systems and satellite carriers.

(a) *General.* This section prescribes procedures pertaining to the verification of a Statement of Account

filed with the Copyright Office pursuant to sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code.

(b) *Definitions.* As used in this section:

(1) The term *cable system* has the meaning set forth in § 201.17(b)(2).

(2) *Copyright owner* means any person or entity that owns the copyright in a work embodied in a secondary transmission made by a statutory licensee that filed a Statement of Account with the Copyright Office for an accounting period beginning on or after January 1, 2010, or a designated agent or representative of such person or entity.

(3) *Multiple system operator* or *MSO* means an entity that owns, controls, or operates more than one cable system.

(4) *Net aggregate underpayment* means the aggregate amount of underpayments found by the auditor less the aggregate amount of any overpayments found by the auditor, as measured against the total amount of royalties reflected on the Statements of Account examined by the auditor.

(5) *Participating copyright owner* means a copyright owner that filed a notice of intent to audit a Statement of Account pursuant to paragraph (c)(1) or (2) of this section and any other copyright owner that has given notice of its intent to participate in such audit pursuant to paragraph (c)(3) of this section.

(6) The term *satellite carrier* has the meaning set forth in 17 U.S.C. 119(d)(6).

(7) The term *secondary transmission* has the meaning set forth in 17 U.S.C. 111(f)(2).

(8) *Statement of Account* or *Statement* means a semiannual Statement of Account filed with the Copyright Office under 17 U.S.C. 111(d)(1) or 119(b)(1) or an amended Statement of Account filed with the Office pursuant to §§ 201.11(h) or 201.17(m).

(9) *Statutory licensee* or *licensee* means a cable system or satellite carrier that filed a Statement of Account with the Office under 17 U.S.C. 111(d)(1) or 119(b)(1).

(c) *Notice of intent to audit.* (1) Any copyright owner that intends to audit a Statement of Account for an accounting period beginning on or after January 1, 2010 must provide written notice to the Register of Copyrights no later than three years after the last day of the year in which the Statement was filed with the Office. The notice must be received in the Office on or after December 1st and no later than December 31st, and a copy of the notice must be provided to the statutory licensee on the same day that it is filed with the Office. Between January 1st and January 31st of the next calendar year the Office will publish a notice in the FEDERAL REGISTER announcing the receipt of the notice of intent to audit. A notice of intent to audit may be filed by an individual copyright owner or a designated agent that represents a group or multiple groups of copyright owners. The notice shall include a statement indicating that it is a ''notice of intent to audit'' and it shall contain the following information:

(i) It shall identify the licensee that filed the Statement(s) with the Office, and the Statement(s) and accounting period(s) that will be subject to the audit.

(ii) It shall identify the party that filed the notice, including its name, address, telephone number, and email address, and it shall include a statement that the party owns or represents one or more copyright owners that own a work that was embodied in a secondary transmission made by the statutory licensee during one or more of the accounting period(s) specified in the Statement(s) that will be subject to the audit.

(2) Notwithstanding the schedule set forth in paragraph (c)(1) of this section, any copyright owner that intends to audit a Statement of Account pursuant to an expanded audit under paragraph (n) of this section may provide written notice of such to the Register of Copyrights during any month, but no later than three years after the last day of the year in which the Statement was filed with the Office. A copy of the notice must be provided to the licensee on the same day that the notice is filed with the Office. Within thirty days after the notice has been received, the Office will publish a notice in the FEDERAL REGISTER announcing the receipt of the notice of intent to conduct an expanded audit. A notice given pursuant to this paragraph may be provided by an individual copyright owner or a

designated agent that represents a group or multiple groups of copyright owners. The notice shall include a statement indicating that it is a ''notice of intent to conduct an expanded audit'' and it shall contain the information specified in paragraphs (c)(1)(i) and (ii) of this section.

(3) Within thirty days after a notice is published in the FEDERAL REGISTER pursuant to paragraphs (c)(1) or (2) of this section, any other copyright owner that owns a work that was embodied in a secondary transmission made by that statutory licensee during an accounting period covered by the Statement(s) of Account referenced in the FEDERAL REGISTER notice and that wishes to participate in the audit of such Statement(s) must provide written notice of such participation to the Copyright Office as well as to the licensee and party that filed the notice of intent to audit. A notice given pursuant to this paragraph may be provided by an individual copyright owner or a designated agent that represents a group or multiple groups of copyright owners, and shall include the information specified in paragraphs (c)(1)(i) and (ii) of this section.

(4) Notices submitted to the Office under paragraphs (c)(1) through (3) of this section should be addressed to the ''U.S. Copyright Office, Office of the General Counsel'' and should be sent to the address for time-sensitive requests set forth in § 201.1(c)(1).

(5) Once the Office has received a notice of intent to audit a Statement of Account under paragraphs (c)(1) or (2) of this section, a notice of intent to audit that same Statement will not be accepted for publication in the FEDERAL REGISTER.

(6) Once the Office has received a notice of intent to audit two Statements of Account filed by a particular satellite carrier or a particular cable system, a notice of intent to audit that same carrier or that same system under paragraph (c)(1) of this section will not be accepted for publication in the FEDERAL REGISTER until the following calendar year.

(d) *Selection of the auditor.* (1) Within forty-five days after a notice is published in the FEDERAL REGISTER pursuant to paragraph (c)(1) of this section, the participating copyright owners shall provide the statutory licensee with a list of three independent and qualified auditors, along with information reasonably sufficient for the licensee to evaluate the proposed auditors' independence and qualifications, including:

(i) The auditor's *curriculum vitae* and a list of audits that the auditor has conducted pursuant to 17 U.S.C. 111(d)(6) or 119(b)(2);

(ii) A list and, subject to any confidentiality or other legal restrictions, a brief description of any other work the auditor has performed for any of the participating copyright owners during the prior two calendar years;

(iii) A list identifying the participating copyright owners for whom the auditor's firm has been engaged during the prior two calendar years; and,

(iv) A copy of the engagement letter that would govern the auditor's performance of the audit and that provides for the auditor to be compensated on a non-contingent flat fee or hourly basis that does not take into account the results of the audit.

(2) Within five business days after receiving the list of auditors from the participating copyright owners, the licensee shall select one of the proposed auditors and shall notify the participating copyright owners of its selection. That auditor shall be retained by the participating copyright owners and shall conduct the audit on behalf of all copyright owners who own a work that was embodied in a secondary transmission made by the licensee during the accounting period(s) specified in the Statement(s) of Account identified in the notice of intent to audit.

(3) The auditor shall be independent and qualified as defined in this section. An auditor shall be considered independent and qualified if:

(i) He or she is a certified public accountant and a member in good standing with the American Institute of Certified Public Accountants (''AICPA'') and the licensing authority for the jurisdiction(s) where the auditor is licensed to practice;

(ii) He or she is not, for any purpose other than the audit, an officer, employee, or agent of any participating copyright owner;

(iii) He or she is independent as that term is used in the Code of Professional Conduct of the AICPA, including the Principles, Rules, and Interpretations of such Code; and

(iv) 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.

(e) *Commencement of the audit.* (1) Within ten days after the selection of the auditor, the auditor shall meet by telephone or in person with designated representatives of the participating copyright owners and the statutory licensee to review the scope of the audit, audit methodology, applicable auditing standard, and schedule for conducting and completing the audit.

(2) Within thirty days after the selection of the auditor, the licensee shall provide the auditor and a representative of the participating copyright owners with a list of all broadcast signals retransmitted pursuant to the statutory license in each community covered by each of the Statements of Account subject to the audit, including the call sign for each broadcast signal and each multicast signal. In the case of an audit involving a cable system or MSO, the list must include the classification of each signal on a community-by-community basis pursuant to §201.17(e)(9)(iv) through (v) and 201.17(h). The list shall be signed by a duly authorized agent of the licensee and the signature shall be accompanied by the following statement ''I, the undersigned agent of the statutory licensee, 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.''

(f) *Failure to proceed with a noticed audit.* If the participating copyright owners fail to provide the statutory licensee with a list of auditors or fail to retain the auditor selected by the licensee pursuant to paragraph (d)(2) of this section, the Statement(s) of Account identified in the notice of intent to audit shall not be subject to audit under this section.

(g) *Ex parte communications.* Following the initial consultation pursuant to paragraph (e)(1) of this section and until the distribution of the auditor's final report to the participating copyright owners pursuant to paragraph (i)(3) of this section, there shall be no *ex parte* communications regarding the audit between the auditor and the participating copyright owners or their representatives; provided, however, that the auditor may engage in such *ex parte* communications where either:

(1) Subject to paragraph (i)(4) of this section, the auditor has a reasonable basis to suspect fraud and that participation by the licensee in communications regarding the suspected fraud would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud; or

(2) The auditor provides the licensee with a reasonable opportunity to participate in communications with the participating copyright owners or their representatives and the licensee declines to do so.

(h) *Auditor's authority and access.* (1) The auditor shall have exclusive authority to verify all of the information reported on the Statement(s) of Account subject to the audit in order to confirm the correctness of the calculations and royalty payments reported therein; provided, however, that the auditor shall not determine whether any cable system properly classified any broadcast signal as required by §201.17(e)(9)(iv) through (v) and 201.17(h) or whether a satellite carrier properly determined that any subscriber or group of subscribers is eligible to receive any broadcast signals under 17 U.S.C. 119(a).

(2) The statutory licensee shall provide the auditor with reasonable access to the licensee's books and records and any other information that the auditor needs in order to conduct the audit. The licensee shall provide the auditor with any information the auditor reasonably requests promptly after receiving such a request.

(3) The audit shall be conducted during regular business hours at a location designated by the licensee with consideration given to minimizing the costs and burdens associated with the audit.

If the auditor and the licensee agree, the audit may be conducted in whole or in part by means of electronic communication.

(4) With the exception of its obligations under paragraphs (d) and (e) of this section, a licensee may suspend its participation in an audit for no more than sixty days before the semi-annual due dates for filing Statements of Account by providing advance written notice to the auditor and a representative of the participating copyright owners, provided however, that if the participating copyright owners notify the licensee within ten days of receiving such notice of their good-faith belief that the suspension could prevent the auditor from delivering his or her final report to the participating copyright owners before the statute of limitations may expire on any claims under the Copyright Act related to a Statement of Account covered by that audit, the licensee may not suspend its participation in the audit unless it first executes a tolling agreement to extend the statute of limitations by a period of time equal to the period of the suspension.

(i) *Audit report.* (1) After reviewing the books, records, and any other information received from the statutory licensee, the auditor shall prepare a draft written report setting forth his or her initial conclusions and shall deliver a copy of that draft report to the licensee. The auditor shall then consult with a representative of the licensee regarding the conclusions set forth in the draft report for up to thirty days. If, upon consulting with the licensee, the auditor concludes that there are errors in the facts or conclusions set forth in the draft report, the auditor shall correct those errors.

(2) Within thirty days after the date that the auditor delivered the draft report to the licensee pursuant to paragraph (i)(1) of this section, the auditor shall prepare a final version of the written report setting forth his or her ultimate conclusions and shall deliver a copy of that final version to the licensee. Within fourteen days thereafter, the licensee may provide the auditor with a written rebuttal setting forth its good faith objections to the facts or conclusions set forth in the final version of the report.

(3) Subject to the confidentiality provisions set forth in paragraph (l) of this section, the auditor shall attach a copy of any written rebuttal timely received from the licensee to the final version of the report and shall deliver a copy of the complete final report to the participating copyright owners and the licensee. The final report must be delivered by November 1st of the year in which the notice was published in the FEDERAL REGISTER pursuant to paragraph (c)(1) of this section and within five business days after the last day on which the licensee may provide the auditor with a written rebuttal pursuant to paragraph (i)(2) of this section. Upon delivery of the complete and final report, the auditor shall notify the Office that the audit has been completed. The notice to the Office shall specify the date that the auditor delivered the final report to the parties; whether, with respect to each statement examined, the auditor has discovered any underpayment or overpayment; and whether the auditor has received a written rebuttal from the licensee. The notice should be addressed to the ''U.S. Copyright Office, Office of the General Counsel'' and should be sent to the address for time-sensitive requests specified in § 201.1(c)(1).

(4) Prior to the delivery of the final report pursuant to paragraph (i)(3) of this section the auditor shall not provide any draft of his or her report to the participating copyright owners or their representatives; provided, however, that the auditor may deliver a draft report simultaneously to the licensee and the participating copyright owners if the auditor has a reasonable basis to suspect fraud.

(j) *Corrections, supplemental payments, and refunds.* (1) If the auditor concludes in his or her final report that any of the information reported on a Statement of Account is incorrect or incomplete, that the calculation of the royalty fee payable for a particular accounting period was incorrect, or that the amount deposited in the Office for that period was too low, a statutory licensee may cure such incorrect or incomplete information or underpayment

by filing an amendment to the Statement and, in case of a deficiency in payment, by depositing supplemental royalty fee payments with the Office using the procedures set forth in §§ 201.11(h) or 201.17(m); provided, however, that the amendment and/or payments are received within sixty days after the delivery of the final report to the participating copyright owners and the licensee or in the case of an audit of an MSO, within ninety days after the delivery of such report; and further provided that the licensee has reimbursed the participating copyright owners for the licensee's share of the audit costs, if any, determined to be owing pursuant to paragraph (k)(3) of this section. While reimbursement of audit costs shall be paid to a representative of the participating copyright owners, supplemental royalty fee payments made pursuant to this paragraph shall be delivered to the Office and not to the participating copyright owners or their representatives.

(2) Notwithstanding §§ 201.11(h)(3)(i) and 201.17(m)(4)(i), if the auditor concludes in his or her final report that there was an overpayment on a particular Statement, the licensee may request a refund from the Office using the procedures set forth in §§ 201.11(h)(3) or 201.17(m)(4), provided that the request is received within sixty days after the delivery of the final report to the participating copyright owners and the licensee or within ninety days after the delivery of the final report in the case of an audit of an MSO.

(k) *Costs of the audit.* (1) No later than the fifteenth day of each month during the course of the audit, the auditor shall provide the participating copyright owners with an itemized statement of the costs incurred by the auditor during the previous month, and shall provide a copy to the licensee that is the subject of the audit.

(2) If the auditor concludes in his or her final report that there was no net aggregate underpayment or a net aggregate underpayment of five percent or less, the participating copyright owners shall pay for the full costs of the auditor. If the auditor concludes in his or her final report that there was a net aggregate underpayment of more than five percent but less than ten percent, the costs of the auditor are to be split evenly between the participating copyright owners and the licensee that is the subject of the audit. If the auditor concludes in his or her final report that there was a net aggregate underpayment of ten percent or more, the licensee will be responsible for the full costs of the auditor.

(3) If a licensee is responsible for any portion of the costs of the auditor, a representative of the participating copyright owners shall provide the licensee with an itemized accounting of the auditor's total costs, the appropriate share of which should be paid by the licensee to such representative no later than sixty days after the delivery of the final report to the participating copyright owners and licensee or within ninety days after the delivery of such report in the case of an audit of an MSO.

(4) Notwithstanding anything to the contrary in paragraph (k) of this section, no portion of the auditor's costs that exceed the amount of the net aggregate underpayment may be recovered from the licensee.

(l) *Confidentiality.* (1) For purposes of this section, confidential information shall include any non-public financial or business information pertaining to a Statement of Account that is the subject of an audit under 17 U.S.C. 111(d)(6) or 119(b)(2).

(2) Access to confidential information under this section shall be limited to:

(i) The auditor; and

(ii) Subject to the execution of a reasonable confidentiality agreement, outside counsel for the participating copyright owners and any third party consultants retained by outside counsel, and any employees, agents, consultants, or independent contractors of the auditor who are not employees, officers, or agents of a participating copyright owner for any purpose other than the audit, who are engaged in the audit of a Statement or activities directly related hereto, and who require access to the confidential information for the purpose of performing such duties during the ordinary course of their employment.

(3) The auditor and any person identified in paragraph (l)(2)(ii) of this section shall implement procedures to safeguard all confidential information received from any third party in connection with an audit, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the auditor or such person.

(m) *Frequency and scope of the audit.* (1) Except as provided in paragraph (n)(2) of this section with respect to expanded audits, a cable system, MSO, or satellite carrier shall be subject to no more than one audit per calendar year.

(2) Except as provided in paragraph (n)(1) of this section, the audit of a particular cable system or satellite carrier shall include no more than two of the Statements of Account filed by that cable system or satellite carrier that may be timely noticed for audit under paragraph (c)(1) of this section.

(3) Except as provided in paragraph (n)(3)(ii) of this section, an audit of an MSO shall be limited to a sample of no more than ten percent of the MSO's Form 3 cable systems and no more than ten percent of the MSO's Form 2 systems.

(n) *Expanded audits.* (1) If the auditor concludes in his or her final report that there was a net aggregate underpayment of five percent or more on the Statements of Account examined in an initial audit involving a cable system or satellite carrier, a copyright owner may expand the audit to include all previous Statements filed by that cable system or satellite carrier that may be timely noticed for audit under paragraph (c)(2) of this section. The expanded audit shall be conducted using the procedures set forth in paragraphs (d) through (l) of this section, with the following exceptions:

(i) The expanded audit may be conducted by the same auditor that performed the initial audit, provided that the participating copyright owners provide the licensee with updated information reasonably sufficient to allow the licensee to determine that there has been no material change in the auditor's independence and qualifications. In the alternative, the expanded audit may be conducted by an auditor selected by the licensee using the procedure set forth in paragraph (d) of this section.

(ii) The auditor shall deliver his or her final report to the participating copyright owners and the licensee within five business days following the last day on which the licensee may provide the auditor with a written rebuttal pursuant to paragraph (i)(2) of this section, but shall not be required to deliver the report by November 1st of the year in which the notice was published in the FEDERAL REGISTER pursuant to paragraph (c) of this section.

(2) An expanded audit of a cable system or a satellite carrier that is conducted pursuant to paragraph (n)(1) of this section may be conducted concurrently with another audit involving that same licensee.

(3) If the auditor concludes in his or her final report that there was a net aggregate underpayment of five percent or more on the Statements of Account examined in an initial audit involving an MSO:

(i) The cable systems included in the initial audit of that MSO shall be subject to an expanded audit in accordance with paragraph (n)(1) of this section; and

(ii) The MSO shall be subject to a new initial audit involving a sample of no more than thirty percent of its Form 3 cable systems and no more than thirty percent of its Form 2 cable systems, provided that the notice of intent to conduct that audit is filed in the same calendar year as the delivery of such final report.

(o) *Retention of records.* For each Statement of Account or amended Statement that a statutory licensee files with the Office for accounting periods beginning on or after January 1, 2010, the licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in each Statement or amended Statement for at least three and one-half years after the last day of the year in which that Statement or amended Statement was filed with the Office and, in the event that such Statement or amended Statement is the subject of an audit conducted pursuant to this section,

shall continue to maintain those records until three years after the auditor delivers the final report to the participating copyright owners and the licensee pursuant to paragraph (i)(3) of this section.

[79 FR 68628, Nov. 18, 2014, as amended at 82 FR 9357, Feb. 6, 2017]

§ 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 17 U.S.C. 111(d)(1) 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 distant signal equivalent (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 considered 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 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 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*, *noncommercial educational station*, *primary stream*, *multicast stream*, *simulcast*, *primary transmitter*, *subscriber*, and *subscribe* have the meanings set forth in 17 U.S.C. 111(f), as amended by Public Laws 94–553, 103–369, and 111–175.

(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 January 1 through June 30, and 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 17 U.S.C. 111(d)(1)(B) through (F), by no later than the immediately following August 29, if the Statement of Account covers the January 1 through June 30 accounting period, and by no 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 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) *Statement of Account forms and submission.* Cable systems should submit each Statement of Account using an appropriate form provided by the Copyright Office on its Web site and following the instructions for completion and submission provided on the Office's Web site or the form itself.

(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 $527,600; and

(ii) Form SA3—''Long Form'' for use by cable systems whose semiannual gross receipts for secondary transmission total $527,600 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, including multicast streams 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.

(iii) A multicast stream is considered a channel for purposes of this section.

(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.

(i) 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:

(A) Less the amount of any bad debts actually written-off during that accounting period;

(B) Plus the amount of any previously written-off bad debts for secondary transmission service which were actually recovered during that accounting period.

(ii) If the cable system maintains its revenue accounts on a cash basis, gross receipts of any accounting period includes all such amounts actually received by the cable system during that accounting period.

(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) A designation as to whether the channel carried is a multicast stream, and if so, the sub-channel number assigned to that stream by the television broadcast licensee.

(viii) Simulcasts must be reported and labeled on the Statement of Accounts form in an easily identifiable manner (e.g., WETA–simulcast).

(ix) The information indicated by paragraph (e)(9), paragraphs (v) through (viii) 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.

(x) 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 $137,100 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) A legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, 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 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) 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 in 17 U.S.C. 111(f)(5)(B), and which remain in force under that provision. Two prorated adjustments, as prescribed in that section, are permitted under certain conditions where:

(i) 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

(ii) A station is carried on a ''substitute'' basis under rules, regulations, or authorizations of the FCC in effect on October 19, 1976 (as defined in 17 U.S.C. 111(f)(5)(B)(ii)), 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 copyright royalty fee: subscriber groups.* (1) If a cable system provides a secondary transmission of a primary transmitter to some, but not all, communities served by that cable system—

(i) The gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

(ii) The total royalty fee for the period paid by such system shall not be less than the minimum fee multiplied by the gross receipts from all subscribers to the system.

(2) A cable system that, on a statement submitted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, computed its royalty fee consistent with the methodology under paragraph (i)(1) of this section or that amends a statement filed before such date of enactment to compute the royalty fee due using such methodology, shall not be subject to an action for infringement, or eligible for any royalty refund or offset, arising out of the use of such methodology on such statement.

(3) Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which they are received and shall be distributed as specified under subsection 111(d) of title 17, United States Code. Such payments shall be considered as part of the base rate royalty fund.

(4) The royalty fee rates established by the Satellite Television Extension and Localism Act shall take effect commencing with the first accounting period occurring in 2010.

(h) *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) 1.013 of 1 percent of the system's gross receipts from all subscribers, whichever is larger.

(i) *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).

(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 semiannual 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) It shall be presumed that the 3.75% rate of 37 CFR 308.2(c) applies to DSEs accruing from newly added distant signals, carried for the first time by a cable system after June 24, 1981. The presumption of this section can be rebutted in whole or in part:

(i) 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

(ii) 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).

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) The 3.75% rate does not apply to distant multicast streams retransmitted by cable systems.

(j) *Multicasting.* (1) A royalty payment shall be made for the retransmission of non-network television programming carried on each multicast stream of a distant digital television signal under the following circumstances:

(i) If the distant multicast stream was first retransmitted by a cable system on or after February 27, 2010, or

(ii) If the distant multicast stream is retransmitted by a cable operator on or after July 1, 2010.

(2) In any case in which a distant multicast stream is the subject of a written agreement entered into on or before June 30, 2009, between a cable system or an association representing the cable system and a primary transmitter or an association representing the primary transmitter, a distant signal equivalent value shall not be assigned to a distant multicast stream that is made on or before the date on which such written agreement expires.

(3) No royalties are due for carrying a distant multicast stream that ''simulcasts'' (i.e., duplicates) a primary stream or another multicast stream of the same station that the cable system is carrying. However, simulcast streams must be reported on the Statement of Accounts.

(4) Multicast streams of digital broadcast programming shall not be subject to the 3.75% fee or the syndicated exclusivity surcharge.

(k) *Royalty fee payment.* (1) All royalty fees must be paid by electronic funds transfer, and must be received in

the designated bank by the filing deadline for the relevant accounting period. The following information must be provided as part of the EFT and/or as part of the remittance advice as provided for in circulars issued by the Copyright Office:

(i) Remitter's name and address;

(ii) Name of a contact person, telephone number and extension, and e-mail address;

(iii) The actual or anticipated date that the EFT will be transmitted;

(iv) Type of royalty payment (*i.e.*, cable);

(v) Total amount submitted via the EFT;

(vi) Total amount to be paid by year and period;

(vii) Number of Statements of Account that the EFT covers;

(viii) ID numbers assigned by the Licensing Section;

(ix) Legal name of the owner for each Statement of Account;

(x) Identification of the first community served (city and state).

(2) The remittance advice shall be attached to the Statement(s) of Account. In addition, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Section.

(3) The Office may waive the requirement for payment by electronic funds transfer as set forth in paragraph (i)(1) of this section. To obtain a waiver, the remitter shall submit to the Licensing Section at least 60 days prior to the royalty fee due date a certified statement setting forth the reasons explaining why payment by an electronic funds transfer would be virtually impossible or, alternatively, why it would impose a financial or other hardship on the remitter. The certified statement must be signed by a duly authorized representative of the entity making the payment. A waiver shall cover only a single payment period. Failure to obtain a waiver may result in the remittance being returned to the remitter.

(4) 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 late payments and underpayments of royalties for the cable statutory license occurring within that accounting period. The accrual period shall end on the date the electronic payment submitted by a cable operator is received. The accrual period shall end on the date the electronic payment submitted by a satellite carrier is received by the Copyright Office. In cases where a waiver of the electronic funds transfer requirement is approved by the Copyright Office, and royalties payments are either late or underpaid, the accrual period shall end on the date the payment is postmarked. 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 the actual receipt by the Copyright Office. 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.

(l) *Corrections, supplemental payments, and refunds.* (1) Royalty fee obligations under 17 U.S.C. 111 prior to the effective date of the Satellite Television Extension and Localism Act of 2010, Public Law 111–175, are determined based on carriage of each distant signal on a system-wide basis. Refunds for an overpayment of royalty fees for an accounting period prior to January 1, 2010, shall be made only when all outstanding royalty fee obligations have been met, including those for carriage of each distant signal on a system-wide basis.

(2) Upon compliance with the procedures and within the time limits set forth in paragraph (m)(4) 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, for any reason except that mentioned in paragraph (m)(2)(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.

(3) 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.

(4) 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 (m)(2) of this section. Such requests shall be addressed to the Licensing Section 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. Telephone or similar 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 Section, 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 Section 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.govinfo.gov.*

§ 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. If the eligibility requirements of 17 U.S.C. 115(a) are satisfied, then, subject to 17 U.S.C. 115(b), a person may serve on a copyright owner or file with the Copyright Office, as applicable, a Notice of Intention and thereby obtain a compulsory license pursuant to 17 U.S.C. 115.

(2)(i) To obtain a compulsory license to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery, a Notice must be served on the copyright owner or, if the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which Notice can be served, filed with the Copyright Office, before, or not later than 30 calendar days after, making, and before distributing, any phonorecord of the work.

(ii) Prior to the license availability date, as defined in 17 U.S.C. 115(e), to obtain a compulsory license to make and distribute phonorecords of a musical work by means of digital phonorecord delivery, a Notice must be served on the copyright owner, before, or not later than 30 calendar days after, first making any such digital phonorecord delivery. On and after the license availability date, as defined in 17 U.S.C. 115(e), to obtain such a compulsory license, the procedure described in 17 U.S.C. 115(d)(2) must be followed. As of October 11, 2018, the Copyright Office does not accept Notices that pertain to digital phonorecord deliveries, regardless of whether such a Notice also pertains to phonorecords that are not digital phonorecord deliveries.

(iii) Notwithstanding paragraph (a)(2)(ii) of this section, a record company, as defined in 17 U.S.C. 115(e), may, on or after the license availability date, as defined in 17 U.S.C. 115(e), obtain an individual download license, as described in 17 U.S.C. 115(b)(3) and defined in 17 U.S.C. 115(e), by serving a Notice on the copyright owner, before, or not later than 30 calendar days after, first making any digital phonorecord delivery in the form of a permanent download.

(3) For the purposes of this section, a ''digital phonorecord delivery'' means each individual delivery of a phonorecord by digital transmission of a sound recording that 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 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. Notwithstanding the foregoing, a permanent download, a limited download, or an interactive stream, as defined in 17 U.S.C. 115(e), is a digital phonorecord delivery. A digital phonorecord delivery does not include the digital transmission of sounds accompanying a motion picture or other audiovisual work as defined in 17 U.S.C. 101.

(4) As eligible under paragraph (a)(2) of this section, 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)(2) or (3) of this section. Payment of the applicable fees for a Notice submitted 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. 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 Notice 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 § 210.6(g) of this chapter.

(c) *Form.* The Copyright Office does not provide physical printed forms for the use of persons serving or filing Notices of Intention, but Notices filed electronically must be submitted to the Office in the form and manner prescribed in instructions on the Office's website.

(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, 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 (if eligible under paragraph (a)(2) of this section), 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) As eligible under paragraph (a)(2) of this section, 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.

(2) If a Notice of Intention seeking a compulsory license to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery 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 Section of the Copyright Office, shall be accompanied by the fee specified in §201.3(e) and 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 a Notice of Intention seeking a compulsory license to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery, 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 Section 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 17 U.S.C. 115(b), 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. Notwithstanding the foregoing, the Copyright Office will examine Notices to ensure that they do not pertain to digital phonorecord deliveries. Any Notice submitted to the Office that does pertain to digital phonorecord deliveries, regardless of whether such a Notice also pertains to phonorecords that are not digital phonorecord deliveries, will be rejected. The Office's decision to accept or reject such a Notice is without prejudice to any party claiming that the Notice does or does not pertain to digital phonorecord deliveries, including before a court of competent jurisdiction.

(h) *Harmless errors.* Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(b), 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 Section 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; 83 FR 63064, Dec. 7, 2018; 86 FR 32642, June 22, 2021]

§§ 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 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(c) 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 an email, fax, 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(c)(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) Email, fax, 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; 66 FR 34373, June 28, 2001; 82 FR 9358, Feb. 6, 2017]

§ 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. 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.

(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, 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; 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.

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

[45 FR 41414, June 19, 1980, as amended at 82 FR 9358, Feb. 6, 2017]

§ 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 judgement, 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, as amended at 66 FR 34373, June 28, 2001]

§ 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 Registry Statement'' and which pertains to a work of visual art that has been incorporated in or made part of a building may be recorded in the Copyright Office provided the statement is accompanied by the fee for recordation of documents specified in section 708(a)(4) of title 17 of the United States Code. Upon their submission, the statements and an accompanying documentation or photographs become the property of the United States Government and will not be returned. Photocopies are acceptable if they are clear and legible. Information contained in the Visual Arts Registry Statement should be as complete as possible since the information may affect the enforceability of valuable rights under the copyright law. Visual Arts Registry Statements which are illegible or fall outside of the scope of section 113(d)(3) of title 17 may be refused recordation by the Copyright Office.

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

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

(ii) Identification of the work or works, including the title, dimensions, and physical description of the work and the copyright registration number, if known. Additionally, it is recommended that one or more 8×10 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 8×10 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 8×10 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 × 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, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of recordation 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) *Effect of recordation.* 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; 65 FR 39819, June 28, 2000; 82 FR 9358, Feb. 6, 2017]

§ 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.

(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 recordation 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 20540–4260.

[58 FR 29107, May 19, 1993, as amended at 60 FR 34168, June 30, 1995; 64 FR 29522, June 1, 1999; 65 FR 39819, June 28, 2000; 82 FR 9358, Feb. 6, 2017]

§ 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 minidiscs (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 U.S. Copyright Office free of charge by contacting the address specified in § 201.1.

(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 if 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. The fee for filing an Amendment to an Initial Notice of Distribution of Digital Audio Recording Devices or Media is prescribed in § 201.3(e).

[57 FR 55465, Nov. 25, 1992, as amended at 64 FR 36575, July 7, 1999; 72 FR 33692, June 19, 2007; 78 FR 42874, July 18, 2013; 82 FR 9358, Feb. 6, 2017]

§ 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 minidiscs (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. 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 free from the Copyright Office

website. 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 shall be made as specified in § 201.28(h).

(4) *Reduction of royalty fee.* (i) Section 1004(a)(2)(A) of title 17 of the United States 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 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 a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, 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 Section 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) *Copies of statements of account.* A licensee shall file an original and one copy of the statement of account with the Licensing Section of the Copyright Office.

(h) *Royalty fee payment.* (1) All royalty fees must be paid by electronic funds transfer, and must be received in the designated bank by the filing deadline for the relevant accounting period. The following information must be provided as part of the EFT and/or as part of the remittance advice as provided for in circulars issued by the Copyright Office:

(i) Remitter's name and address;

(ii) Name of a contact person, telephone number and extension, and email address;

(iii) The actual or anticipated date that the EFT will be transmitted;

(iv) Type of royalty payment (*i.e.*, DART);

(v) Total amount submitted via the EFT;

(vi) Total amount to be paid by year and period;

(vii) Number of Statements of Account that the EFT covers;

(viii) ID numbers assigned by the Licensing Section;

(ix) Legal name of the owner for each Statement of Account.

(2) The remittance advice shall be attached to the Statement(s) of Account. In addition, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Section.

(3) The Office may waive the requirement for payment by electronic funds transfer as set forth in paragraph (1) of this section. To obtain a waiver, the remitter shall submit to the Licensing Section at least 60 days prior to the royalty fee due date a certified statement setting forth the reasons explaining why payment by an electronic funds transfer would be virtually impossible or, alternatively, why it would impose a financial or other hardship on the remitter. The certified statement must be signed by a duly authorized representative of the entity making the payment. A waiver shall cover only a single payment period. Failure to obtain a waiver may result in the remittance being returned to the remitter.

(i) *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.

(j) *Corrections, supplemental payments, and refunds*—(1) *General.* Upon compliance with the procedures and within the time limits set forth in this paragraph (i), 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 (j)(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 Section 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. Telephone or similar 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 14 days after the required 60-day 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 prescribed in §201.3(e) 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 (j) 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 Section, 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 Section 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.

(k) *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 Section 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.

(l) *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 for the digital audio recording obligation occurring within that accounting period. The accrual period shall end on the date the electronic payment submitted by the remitter is received. In cases where a waiver of the electronic funds transfer requirement is approved by the Copyright Office, and royalties payments are either late or underpaid, the accrual period shall end

on the date the payment is postmarked. 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 the 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 Section 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.

(m) *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, as amended at 64 FR 36575, July 7, 1999; 65 FR 48914, Aug. 10, 2000; 70 FR 30367, May 26, 2005; 70 FR 38022, July 1, 2005; 71 FR 45740, Aug. 10, 2006; 72 FR 33692, June 19, 2007; 73 FR 29073, May 20, 2008; 82 FR 9358, Feb. 6, 2017; 83 FR 51841, Oct. 15, 2018; 85 FR 19667, Apr. 8, 2020; 86 FR 32642, June 22, 2021]

§ 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 Section. The form must be received in the Licensing Section at least five working days before the date an appointment is requested. The form may be faxed to the Licensing Section 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 the address specified in § 201.1.

(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 fax 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 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; 64 FR 36575, July 7, 1999; 73 FR 37839, July 2, 2008; 78 FR 42874, July 18, 2013; 82 FR 9358, Feb. 6, 2017; 86 FR 32642, June 22, 2021]

§ 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 instituting 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 closing out royalty payments accounts in accordance with the Audio Home Recording Act.

(a) *General.* This section prescribes rules pertaining to the close out of royalty payments accounts in accordance with 17 U.S.C. 1005.

(b) In the Register's discretion, four years after the close of any calendar year, the Register of Copyrights may close out the royalty payments account for that calendar year, including any sub-accounts, that are subject to a final distribution order under which royalty payments have been disbursed. Following closure of an account, the Register will treat any funds remaining in that account, or subsequent deposits that would otherwise be attributable to that calendar year, as attributable to the succeeding calendar year.

[83 FR 51841, Oct. 15, 2018]

§ 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 website.

(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 17 U.S.C. 104A(d)(3), or of significant assets of a person, described in 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 U.S. 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, legible, and submitted in a letter-sized document format.

(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 mailed to the address specified in § 201.1.

(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) Email address 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 prescribed in § 201.3(c).

(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 U.S. Copyright Office. 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, see Circular 5 on the Copyright Office's website, or request a copy at the address specified in § 201.1(b).

(iii) *Credit cards.* For URAA filings the Copyright Office will accept most major credit cards. 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 access.* Notices of Intent to Enforce filed with the Copyright Office are available for public inspection and copying in the Records Research and Certification Section. Some of the information contained in these records is available on the Office's website, including the title of the work or a brief description if the work is untitled and the name of the copyright owner or owner of an exclusive right.

(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. Fax 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; 71 FR 31092, June 1, 2006; 73 FR 37839, July 1, 2008; 78 FR 42874, July 18, 2013; 82 FR 9358, Feb. 6, 2017; 85 FR 19667, Apr. 8, 2020]

§ 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 addressed to Attn: URAA/GATT, NIE and Registrations and mailed to the address specified in § 201.1.

(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 fax 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 prescribed in § 201.3(c).

(2) *Method of payment.* See 37 CFR 201.33(e)(1),(2).

(f) *Public access.* Correction Notices of Intent to Enforce filed with the Copyright Office are available for public inspection and copying in the Records Research and Certification Section.

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, as amended at 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008; 78 FR 42874, July 18, 2013; 82 FR 9359, Feb. 6, 2017]

§ 201.35 Schedules of pre-1972 sound recordings.

(a) *General.* This section prescribes the rules under which rights owners, pursuant to 17 U.S.C. 1401(f)(5)(A), may file schedules listing their pre-1972 sound recordings with the Copyright Office to be eligible for statutory damages and/or attorneys' fees for violations of 17 U.S.C. 1401(a). This section also prescribes the rules for recordation of documents pertaining to the transfer of ownership of pre-1972 sound recordings.

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

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 1401.

(2) A *pre-1972 sound recording* is a sound recording fixed before February 15, 1972.

(3) For pre-1972 sound recordings of classical music, including opera:

(i) The *title* of the pre-1972 sound recording means, to the extent applicable and known by the rights owner, any and all title(s) of the sound recording and underlying musical composition known to the rights owner, and the composer and opus or catalogue number(s) of the underlying musical composition; and

(ii) The *featured artist(s)* of the pre-1972 sound recording means, to the extent applicable and known by the rights owner, the featured soloist(s), featured ensemble(s), featured conductor, and any other featured performer(s).

(c) *Form and submission.* A rights owner seeking to comply with 17 U.S.C. 1401(f)(5)(A) (or her authorized agent) must submit a schedule listing the owner's pre-1972 sound recordings, or amend such a schedule, using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with these requirements.

(d) *Amendment or supplementation.* A rights owner (or her authorized agent) may amend or supplement information regarding a pre-1972 sound recording included in a schedule filed under paragraph (c) of this section by or on behalf of the same rights owner. Information may be corrected if it was incorrect at the time the pre-1972 schedule was submitted to the Office, or supplemented to include information that was omitted at the time the schedule was submitted to the Office. For each recording included in a schedule filed under this paragraph, where the information specified in paragraph (f)(1) of this section does not change from the previously-filed schedule, the date the previously-filed schedule was indexed into the Office's public records remains operative for purposes of 17 U.S.C. 1401(f)(5)(A)(i)(II).

(e) *Removal of record.* A rights owner (or her authorized agent) may remove information regarding a pre-1972 sound recording from the Office's database of schedules if the sound recording was included in a schedule filed under paragraph (c) of this section by or on behalf of the same rights owner, using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. Removal may be made if there was a substantive defect in the pre-1972 schedule regarding the specific sound recording at the time the schedule was submitted to the Office, or, upon a showing of good cause, at the discretion of the Copyright Office. Once a pre-1972 sound recording has been removed from the Office's database of schedules of pre-1972 sound recordings, the sound recording is no longer considered indexed into the Office's records.

(f) *Content.* A schedule of pre-1972 sound recordings filed under paragraphs (c) or (d) of this section shall contain the following:

(1) For each sound recording listed, the right's owner name, sound recording title, and featured artist(s);

(2) If known and practicable, for each sound recording listed, the International Standard Recording Code (''ISRC'');

(3) A certification that the individual submitting the schedule of pre-1972 sound recordings has appropriate authority to submit the schedule and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith; and

(4) For each sound recording listed, the rights owner may opt to include additional information as permitted and in the format specified by the Office's form or instructions, such as the alternate title, alternate artist name(s), album, version, label, or publication date.

(g) *Transfer of rights ownership.* If ownership of a pre-1972 sound recording changes after its inclusion in a schedule filed with the Office under this section, the Office will consider the schedule to be effective as to any successor in interest. A successor in interest may, but is not required, to file a new schedule under this section.

(h) *Legal sufficiency of schedules.* The Copyright Office does not review schedules submitted under paragraphs (c) or (d) of this section for legal sufficiency, interpret their content, or screen them for errors or discrepancies. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. Rights owners are therefore cautioned to review and scrutinize schedules to assure their legal sufficiency before submitting them to the Office.

(i) *Filing date.* The date of filing of a schedule of pre-1972 sound recordings is the date when a proper submission, including the prescribed fee, is received in the Copyright Office. The filing date may not necessarily be the same date

that the schedule, for purposes of 17 U.S.C. 1401(f)(5)(A)(i)(II), is indexed into the Office's public records.

(j) *Fee.* The filing fee to submit a schedule of pre-1972 sound recordings pursuant to this section is prescribed in § 201.3(c).

(k) *Third-party notification.* A person may request timely notification of filings made under this section by following the instructions provided by the Copyright Office on its website.

(l) *Recordation of transfers.* The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership are applicable to the recordation of documents relating to the transfer of ownership of pre-1972 sound recordings under 17 U.S.C. chapter 14.

[83 FR 52153, Oct. 16, 2018, as amended at 84 FR 10684, Mar. 22, 2019]

§ 201.36 Notices of contact information for transmitting entities publicly performing pre-1972 sound recordings.

(a) *General.* This section prescribes the rules under which transmitting entities may file contact information with the Copyright Office pursuant to 17 U.S.C. 1401(f)(5)(B).

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

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 1401.

(2) A *pre-1972 sound recording* is a sound recording fixed before February 15, 1972.

(3) A *transmitting entity* is an entity that, as of October 11, 2018, publicly performs pre-1972 sound recordings by means of digital audio transmission.

(c) *Form and submission.* A transmitting entity seeking to comply with 17 U.S.C. 1401(f)(5)(B) must submit contact information using an appropriate form specified by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with these requirements. No notice or amended notice received after April 9, 2019 will be accepted by the Office.

(d) *Content.* A notice submitted under paragraph (c) of this section shall contain the following, in addition to any other information required on the Office's form or website:

(1) The full legal name, email address, and physical street address of the transmitting entity to which rights owners should send notifications of claimed violations of 17 U.S.C. 1401(a). A post office box may not be substituted for the street address of a transmitting entity. Related or affiliated transmitting entities that are separate legal entities (*e.g.*, corporate parents and subsidiaries) are considered separate transmitting entities, and each must file its own separate notice of contact information.

(2) The website(s) and/or application(s) through which the transmitting entity publicly performs pre-1972 sound recordings by means of digital audio transmission.

(3) A certification that the transmitting entity was publicly performing pre-1972 sound recordings by means of digital audio transmission as of October 11, 2018.

(4) A certification that the individual submitting the notice has appropriate authority to submit the notice and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(5) The transmitting entity may opt to include alternate names for which the transmitting entity seeks application of 17 U.S.C. 1401(f)(5)(B)(iii), such as names that the public would be likely to use to search for the transmitting entity in the Copyright Office's online directory of transmitting entities publicly performing pre-1972 sound recordings by means of digital audio transmission, including names under which the transmitting entity is doing business and other commonly used names. Separate legal entities are not considered alternate names.

(e) *Filing Date.* The date of filing of a notice of contact information pursuant to this section is the date when a proper submission, including the prescribed fee, is received in the Copyright Office.

(f) *Fee.* The filing fee to submit a notice of contact information pursuant to this section is prescribed in § 201.3(c).

[83 FR 52154, Oct. 16, 2018, as amended at 84 FR 10685, Mar. 22, 2019]

§ 201.37 Noncommercial use of pre-1972 sound recordings.

(a) *General.* This section prescribes the rules under which a user, desiring to make noncommercial use of a pre-1972 sound recording pursuant to 17 U.S.C. 1401(c), conducts a good faith, reasonable search to determine whether the sound recording is being commercially exploited, and if not, files a notice of noncommercial use with the Copyright Office. This section also prescribes the rules under which a rights owner of a pre-1972 sound recording identified in a notice of noncommercial use may file an opt-out notice opposing a proposed use of the sound recording, pursuant to 17 U.S.C. 1401(c)(1)(C).

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

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 1401.

(2) A *pre-1972 sound recording* is a sound recording fixed before February 15, 1972. A post-1972 remastered version of a pre-1972 sound recording that consists of mechanical contributions or contributions that are too minimal to be copyrightable qualifies as a pre-1972 sound recording for purposes of this section.

(3) For pre-1972 sound recordings of classical music, including opera:

(i) The *title* of the pre-1972 sound recording means, to the extent applicable and known by the user, any and all title(s) of the sound recording and underlying musical composition known to the user, and the composer and opus or catalogue number(s) of the underlying musical composition; and

(ii) The *featured artist(s)* of the pre-1972 sound recording means, to the extent applicable and known by the user, the featured soloist(s); featured ensemble(s); featured conductor; and any other featured performer(s).

(4) An *Alaska Native or American Indian tribe* is a tribe included in the U.S. Department of the Interior's list of federally recognized tribes, as published annually in the FEDERAL REGISTER.

(c) *Conducting a good faith, reasonable search.* (1) Pursuant to 17 U.S.C. 1401(c)(3)(A), a user desiring to make noncommercial use of a pre-1972 sound recording should progressively search for the sound recording in each of the categories below until the user finds the sound recording. If the user finds the sound recording in a search category, the user need not search the subsequent search categories. If the user does not find the pre-1972 sound recording after searching each of the categories below, her search is sufficient for purposes of the safe harbor in 17 U.S.C. 1401(c)(4), establishing that she made a good faith, reasonable search without finding commercial exploitation of the sound recording by or under the authority of the rights owner. The categories are:

(i) Searching the Copyright Office's database of indexed schedules listing right owners' pre-1972 sound recordings (*https://www.copyright.gov/music-modernization/pre1972-soundrecordings/search-soundrecordings.html*);

(ii) Searching at least one major search engine, namely Google, Yahoo!, or Bing, to determine whether the pre-1972 sound recording is being offered for sale in download form or as a new (not resale) physical product, or is available through a streaming service;

(iii) Searching at least one of the following streaming services: Amazon Music Unlimited, Apple Music, Spotify, or TIDAL;

(iv) Searching YouTube, to determine whether the pre-1972 sound recording is offered under license by the sound recording rights owner (*e.g.*, record label or distribution service);

(v) Searching SoundExchange's repertoire database through the SoundExchange ISRC lookup tool (*https://isrc.soundexchange.com/#!/search*);

(vi) Searching at least one major seller of physical product, namely Amazon.com, and if the pre-1972 sound recording is of classical music or jazz, searching a smaller online music store that specializes in product relative to that niche genre, namely: ArkivJazz, ArkivMusic, Classical Archives, or Presto; in either case, to determine whether the pre-1972 sound recording is being offered for sale in download form

or as a new (not resale) physical product; and

(vii) For pre-1972 ethnographic sound recordings of Alaska Native or American Indian tribes, searching, if such contact information is known to the user, by contacting the relevant Alaska Native or American Indian tribe and the holding institution of the sound recording (such as a library or archive) to gather information to determine whether the sound recording is being commercially exploited. If this contact information is not previously known to the prospective user, the user should use the information provided by the U.S. Department of the Interior's Bureau of Indian Affairs' Tribal Leaders directory, which provides contact information for each federally recognized tribe.

(2) A search under paragraph (c)(1) of this section must include searching the title of the pre-1972 sound recording and its featured artist(s). If the user knows any of the following attributes of the sound recording, and the source being searched has the capability to search any of these attributes, the search must also include searching: alternate artist name(s), alternate title(s), album title, and the International Standard Recording Code (''ISRC''). A user is encouraged, but not required, to search additional known attributes, such as the label or version. A user searching using a search engine should draw reasonable inferences from the search results, including following those links whose name or accompanying text suggest that commercial exploitation might be found there, and reading additional pages of results until two consecutive pages return no such suggestive links. A user need not read every web page returned in a search result.

(3) A search under paragraph (c)(1) of this section must be conducted no later than 90 days of the user (or her authorized agent) filing a notice of noncommercial use under paragraph (d)(1) of this section to be sufficient for purposes of the safe harbor in 17 U.S.C. 1401(c)(4).

(4) For purposes of the safe harbor in 17 U.S.C. 1401(c)(4), a user cannot rely on:

(i) A search conducted under paragraph (c)(1) of this section by a third party who is not the user's authorized agent; or

(ii) A notice of noncommercial use filed under paragraph (d)(1) of this section by a third party (who is not the user's authorized agent).

(5) A user is encouraged to save documentation (*e.g.*, screenshots, list of search terms) of her search under paragraph (c)(1) of this section for at least three years in case her search is challenged.

(d) *Notices of noncommercial use*—(1) *Form and submission.* A user seeking to comply with 17 U.S.C. 1401(c)(1) (or her authorized agent) must submit a notice of noncommercial use identifying the pre-1972 sound recording that the user intends to use and the nature of such use using an appropriate form and instructions provided by the Copyright Office on its website. The Office may reject any submission that fails to comply with the requirements of this section.

(2) *Content.* A notice of noncommercial use shall contain the following:

(i) The user's full legal name, and whether the user is an individual person or corporate entity, including whether the entity is a tax-exempt organization as defined under the Internal Revenue Code. Additional contact information, including an email address, may be optionally provided.

(ii) The title and featured artist(s) of the pre-1972 sound recording desiring to be used.

(iii) If any are known to the user, the current or last-known rights owner (*e.g.*, record label), alternate artist name(s), alternate title(s), album title, and International Standard Recording Code (''ISRC'').

(iv) The user may include additional optional information about the pre-1972 sound recording as permitted by the Office's form or instructions, such as the year of release.

(v) A description of the proposed noncommercial use, including a summary of the project and its purpose, how the pre-1972 sound recording will be used in the project, the start and end dates of the use, and where the proposed use will occur (*i.e.*, the U.S.-based territory

of the use). The user may include additional optional information detailing the proposed use, such as the tentative title of the project, the playing time of the pre-1972 sound recording to be used as well as total playing time of the project, a description of corresponding visuals in the case of audiovisual uses, and whether and how the user will credit the sound recording title, featured artist, and/or rights owner in connection with the project.

(vi) A certification that the user searched but did not find the pre-1972 sound recording in a search conducted under paragraph (c) of this section, or else conducted a good faith, reasonable search for, but did not find, the sound recording in the Copyright Office's database of indexed schedules listing right owners' pre-1972 sound recordings, or on services offering a comprehensive set of sound recordings for sale or streaming.

(vii) A certification that the individual submitting the notice of noncommercial use has appropriate authority to submit the notice, that the user desiring to make noncommercial use of the pre-1972 sound recording (or the user's authorized agent) conducted a search under paragraph (c) of this section or else conducted a good faith, reasonable search under 17 U.S.C. 1401(c)(4), within the last 90 days without finding commercial exploitation of the sound recording, and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(3) Noncommercial use of a pre-1972 recording under this section is limited to use within the United States.

(4) A notice of noncommercial use may not include proposed use for more than one pre-1972 sound recording unless all of the sound recordings include the same featured artist(s) and were released on the same pre-1972 album or other unit of publication. In the case of ''greatest hits'' or compilation albums, all of the sound recordings listed on a notice must also share the same record label or other rights owner information, as listed on the notice.

(5) The Copyright Office will assign each indexed notice of noncommercial use a unique identifier to identify the notice in the Office's public records.

(6) *Legal sufficiency*. (i) The Copyright Office does not review notices of noncommercial use submitted under paragraph (d)(1) of this section for legal sufficiency. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. The fact that the Office has indexed a notice is not a determination by the Office of the notice's validity or legal effect. Indexing by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for making a noncommercial use of a pre-1972 sound recording have not been met, including before a court of competent jurisdiction. Users are therefore cautioned to review and scrutinize notices of noncommercial use to assure their legal sufficiency before submitting them to the Office.

(ii) If a rights owner does not file an opt-out notice under paragraph (e) of this section, when the term of use specified in the notice of noncommercial use ends, the user must cease noncommercial use of the pre-1972 sound recording for purposes of remaining in the safe harbor in 17 U.S.C. 1401(c)(4). Should the user desire to requalify for the safe harbor with respect to that same recording, the user must conduct a new search and file a new notice of noncommercial use under paragraphs (c) and (d) of this section, respectively.

(7) *Filing date*. The date of filing of a notice of noncommercial use is the date when a proper submission, including the prescribed fee, is received in the Copyright Office. The filing date may not necessarily be the same date that the notice, for purposes of 17 U.S.C. 1401(c)(1)(C), is indexed into the Office's public records.

(8) *Fees*. The filing fee to submit a notice of noncommercial use pursuant to this section is prescribed in § 201.3(c).

(9) *Third-party notification*. A person may request timely notification of filings made under paragraph (d)(1) of this section by following the instructions provided by the Copyright Office on its website.

(e) *Opt-out notices*—(1) *Form and submission*. A rights owner seeking to comply with 17 U.S.C. 1401(c)(1)(C) (or her authorized agent) must file a notice opting out of a proposed noncommercial use of a pre-1972 sound recording filed under paragraph (d)(1) of this section using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with the requirements of this section, or any relevant instructions or guidance provided by the Office.

(2) *Content*. An opt-out notice use shall contain the following:

(i) The user's name, rights owner's name, sound recording title, featured artist(s), an affirmative ''yes'' statement that the rights owner is opting out of the proposed use, and the unique identifier assigned to the notice of noncommercial use by the Copyright Office. Additional contact information for the rights owner, including an email address, may be optionally provided.

(ii) A certification that the individual submitting the opt-out notice has appropriate authority to submit the notice and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(iii) Submission of an opt-out notice does not constitute agreement by the rights owner or the individual submitting the opt-out notice that the proposed use is in fact noncommercial. The submitter may choose to comment upon whether the rights owner agrees that the proposed use is noncommercial use, but failure to do so does not constitute agreement that the proposed use is in fact noncommercial.

(3) Where a pre-1972 sound recording has multiple rights owners, only one rights owner must file an opt-out notice for purposes of 17 U.S.C. 1401(c)(5).

(4) If a rights owner files a timely opt-out notice under paragraph (e)(1) of this section, a user must wait one year before filing another notice of noncommercial use proposing the same or similar use of the same pre-1972 sound recording(s).

(5) *Legal sufficiency*. The Copyright Office does not review opt-out notices submitted under paragraph (e)(1) of this section for legal sufficiency. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. Rights owners are therefore cautioned to review and scrutinize opt-out notices to assure their legal sufficiency before submitting them to the Office.

(6) *Filing date*. The date of filing of an opt-out notice is the date when a proper submission, including the prescribed fee, is received in the Copyright Office.

(7) *Fee*. The filing fee to submit an opt-out notice pursuant to this section is prescribed in § 201.3(c).

(f) *Fraudulent filings*. If the Register becomes aware of abuse or fraudulent filings under this section by or from a certain filer or user, she shall have the discretion to impose civil penalties up to $1,000 per instance of fraud or abuse, and/or other penalties to deter additional false or fraudulent filings from that filer, including potentially rejecting future submissions from that filer for up to one year.

[84 FR 14255, Apr. 9, 2019]

§ 201.38 Designation of agent to receive notification of claimed infringement.

(a) *General*. This section prescribes the rules pursuant to which service providers may designate agents to receive notifications of claimed infringement pursuant to section 512 of title 17 of the United States Code. Any service provider seeking to comply with section 512(c)(2) of the statute must:

(1) Designate an agent by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, the service provider and designated agent information required by paragraph (b) of this section;

(2) Maintain the currency and accuracy of the information required by paragraph (b) both on its website and with the Office by timely updating such information when it has changed; and

(3) Comply with the electronic registration requirements in paragraph (c) to designate an agent with the Office.

(b) *Information required to designate an agent.* To designate an agent, a service provider must make available through its service, including on its website in a location accessible to the public, and provide to the Copyright Office in accordance with paragraph (c) of this section, the following information:

(1)(i) The full legal name and physical street address of the service provider. Related or affiliated service providers that are separate legal entities (*e.g.*, corporate parents and subsidiaries) are considered separate service providers, and each must have its own separate designation.

(ii) A post office box may not be substituted for the street address for the service provider, except in exceptional circumstances (e.g., where there is a demonstrable threat to an individual's personal safety or security, such that it may be dangerous to publicly publish a street address where such individual can be located) and, upon written request by the service provider, the Register of Copyrights determines that the circumstances warrant a waiver of this requirement. To obtain a waiver, the service provider must make a written request submitted either by email, to *poboxwaiver@copyright.gov*, or by signed letter, addressed to the ''U.S. Copyright Office, Office of the General Counsel'' and sent to the address for time-sensitive requests set forth in § 201.1(c)(1). Requests must contain the following information: The name of the service provider; the post office box address that the service provider wishes to use; a detailed statement providing the reasons supporting the request, with explanation of the specific threat(s) to an individual's personal safety or security; and an email address for any responsive correspondence from the Office. There is no fee associated with making this request. If the request is approved, the service provider may display the post office box address on its website and will receive instructions from the Office as to how to complete the Office's electronic registration process.

(2) All alternate names that the public would be likely to use to search for the service provider's designated agent in the Copyright Office's online directory of designated agents, including all names under which the service provider is doing business, website names and addresses (*i.e.*, URLs), software application names, and other commonly used names. Separate legal entities are not considered alternate names.

(3) The name of the agent designated to receive notifications of claimed infringement and, if applicable, the name of the agent's organization. The designated agent may be an individual (*e.g.*, ''Jane Doe''), a specific position or title held by an individual (*e.g.*, ''Copyright Manager''), a specific department within the service provider's organization or within a third-party entity (*e.g.*, ''Copyright Compliance Department''), or a third-party entity generally (*e.g.*, ''ACME Takedown Service''). Only a single agent may be designated for each service provider.

(4) The physical mail address (street address or post office box), telephone number, and email address of the agent designated to receive notifications of claimed infringement.

(c) *Electronic registration with the Copyright Office.* Service providers designating an agent with the Copyright Office must do so electronically by establishing an account with and then utilizing the applicable online registration system made available through the Copyright Office's website. Designations, amendments, and resubmissions submitted to the Office in paper or any other form will not be accepted. All electronic registrations must adhere to the following requirements:

(1) *Registration information.* All required fields in the online registration system must be completed in order for the designation to be registered with the Copyright Office. In addition to the information required by paragraph (b) of this section, the person designating the agent with the Office must provide the following for administrative purposes, and which will not be displayed in the Office's public directory and need not be displayed by the service provider on its website:

(i) The first name, last name, telephone number, and email address of a representative of the service provider who will serve as the primary point of

contact for communications with the Office.

(ii) A telephone number and email address for the service provider for communications with the Office.

(2) *Attestation.* For each designation and any subsequent amendment or resubmission of such designation, the person designating the agent, or amending or resubmitting such designation, must attest that:

(i) The information provided to the Office is true, accurate, and complete to the best of his or her knowledge; and

(ii) He or she has been given authority to make the designation, amendment, or resubmission on behalf of the service provider.

(3) *Amendment.* All service providers must ensure the currency and accuracy of the information contained in designations submitted to the Office by timely updating information when it has changed. A service provider may amend a designation previously registered with the Office at any time to correct or update information.

(4) *Periodic renewal.* A service provider's designation will expire and become invalid three years after it is registered with the Office, unless the service provider renews such designation by either amending it to correct or update information or resubmitting it without amendment. Either amending or resubmitting a designation, as appropriate, begins a new three-year period before such designation must be renewed.

(d) *Fees.* The Copyright Office's general fee schedule, located at section 201.3 of title 37 of the Code of Federal Regulations, sets forth the applicable fee for a service provider to designate an agent with the Copyright Office to receive notifications of claimed infringement and to amend or resubmit such a designation.

(e) *Transitional provisions.* (1) As of December 1, 2016, any designation of an agent pursuant to 17 U.S.C. 512(c)(2) must be made electronically through the Copyright Office's online registration system.

(2) A service provider that has designated an agent with the Office under the previous version of this section, which was effective between November 3, 1998 and November 30, 2016, and desires to remain in compliance with section 512(c)(2) of title 17, United States Code, must submit a new designation electronically using the online registration system by December 31, 2017. Any designation not made through the online registration system will expire and become invalid after December 31, 2017.

(3) During the period beginning with the effective date of this section, December 1, 2016, through December 31, 2017 (the ''transition period''), the Copyright Office will maintain two directories of designated agents: the directory consisting of paper designations made pursuant to the prior interim regulations (the ''old directory''), and the directory consisting of designations made electronically through the online registration system (the ''new directory''). During the transition period, a compliant designation in either the old directory or the new directory will satisfy the service provider's obligation under section 512(c)(2) of title 17, United States Code to designate an agent with the Copyright Office.

[81 FR 75707, Nov. 1, 2016, as amended at 82 FR 9358, Feb. 6, 2017; 82 FR 21697, May 10, 2017; 85 FR 11295, Feb. 27, 2020]

§ 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 is 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 unpublished works;

(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

(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, in the manner prescribed in § 201.1.

(2) *Amount.* The filing fee for recording Notice to Libraries and Archives is prescribed in § 201.3(d).

(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 U.S. Copyright Office. 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, see Circular 5 on the Copyright Office's website, or request a copy at the address specified in § 201.1(b).

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: _____

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, as amended at 66 FR 34373, June 28, 2001; 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008; 78 FR 42874, July 18, 2013; 82 FR 9359, Feb. 6, 2017; 85 FR 19667, Apr. 8, 2020]

§ 201.40 Exemptions to prohibition against circumvention.

(a) *General.* This section prescribes the classes of copyrighted works for which the Librarian of Congress has determined, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), that noninfringing uses by persons who are users of such works are, or are likely to be, adversely affected. The prohibition against circumvention of technological measures that control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to such users of the prescribed classes of copyrighted works.

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following classes of copyrighted works:

(1) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, and the person engaging in circumvention under paragraphs (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, where circumvention is undertaken solely in order to make use of short portions of the motion pictures in the following instances:

(i) For the purpose of criticism or comment:

(A) For use in documentary filmmaking, or other films where the motion picture clip is used in parody or for its biographical or historically significant nature;

(B) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity's use is noncommercial); or

(C) For use in nonfiction multimedia e-books.

(ii) For educational purposes:

(A) By college and university faculty and students or kindergarten through twelfth-grade (K–12) educators and students (where the K–12 student is circumventing under the direct supervision of an educator), or employees acting at the direction of faculty of such educational institutions for the purpose of teaching a course, including of accredited general educational development (GED) programs, for the purpose of criticism, comment, teaching, or scholarship;

(B) By faculty of accredited nonprofit educational institutions and employees acting at the direction of faculty members of those institutions, for purposes of offering massive open online courses (MOOCs) to officially enrolled students through online platforms (which platforms themselves may be operated for profit), in film studies or other courses requiring close analysis of film and media excerpts, for the purpose of criticism or comment, where the MOOC provider through the online platform limits transmissions to the extent technologically feasible to such officially enrolled students, institutes copyright policies and provides copyright informational materials to faculty, students, and relevant staff members, and applies technological measures that reasonably prevent unauthorized further dissemination of a work in accessible form to others or retention of the work for longer than the course session by recipients of a transmission through the platform, as contemplated by 17 U.S.C. 110(2); or

(C) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities, for the purpose of criticism or comment, except that such users may only circumvent using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.

(2)(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, where:

(A) Circumvention is undertaken by a disability services office or other unit of a kindergarten through twelfth-grade educational institution, college, or university engaged in and/or responsible for the provision of accessibility services for the purpose of adding captions and/or audio description to a motion picture to create an accessible version for students, faculty, or staff with disabilities;

(B) The educational institution unit in paragraph (b)(2)(i)(A) of this section has a reasonable belief that the motion picture will be used for a specific future activity of the institution and, after a reasonable effort, has determined that an accessible version of sufficient quality cannot be obtained at a fair market price or in a timely manner, including where a copyright holder has not provided an accessible version of a motion picture that was included with a textbook; and

(C) The accessible versions are provided to students or educators and stored by the educational institution in a manner intended to reasonably prevent unauthorized further dissemination of a work.

(ii) For purposes of paragraph (b)(2) of this section,

(A) ''Audio description'' means an oral narration that provides an accurate rendering of the motion picture;

(B) ''Accessible version of sufficient quality'' means a version that in the reasonable judgment of the educational institution unit has captions and/or audio description that are sufficient to meet the accessibility needs of students, faculty, or staff with disabilities and are substantially free of errors that would materially interfere with those needs; and

(C) Accessible materials created pursuant to this exemption and stored pursuant to paragraph (b)(2)(i)(C) of this section may be reused by the educational institution unit to meet the accessibility needs of students, faculty, or staff with disabilities pursuant to

paragraphs (b)(2)(i)(A) and (B) of this section.

(3)(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, or on a Blu-ray disc protected by the Advanced Access Content System, solely for the purpose of lawful preservation or the creation of a replacement copy of the motion picture, by an eligible library, archives, or museum, where:

(A) Such activity is carried out without any purpose of direct or indirect commercial advantage;

(B) The DVD or Blu-ray disc is damaged or deteriorating;

(C) The eligible institution, after a reasonable effort, has determined that an unused and undamaged replacement copy cannot be obtained at a fair price and that no streaming service, download service, or on-demand cable and satellite service makes the motion picture available to libraries, archives, and museums at a fair price; and

(D) The preservation or replacement copies are not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) For purposes of paragraph (b)(3)(i) of this section, a library, archives, or museum is considered ''eligible'' if—

(A) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(B) The library, archives, or museum has a public service mission;

(C) The library, archives, or museum's trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(D) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(E) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by paragraph (b)(3)(i) of this section.

(4)(i) Motion pictures, as defined in 17 U.S.C. 101, where the motion picture is on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or made available for digital download where:

(A) The circumvention is undertaken by a researcher affiliated with a nonprofit institution of higher education, or by a student or information technology staff member of the institution at the direction of such researcher, solely to deploy text and data mining techniques on a corpus of motion pictures for the purpose of scholarly research and teaching;

(B) The copy of each motion picture is lawfully acquired and owned by the institution, or licensed to the institution without a time limitation on access;

(C) The person undertaking the circumvention views or listens to the contents of the motion pictures in the corpus solely for the purpose of verification of the research findings; and

(D) The institution uses effective security measures to prevent further dissemination or downloading of motion pictures in the corpus, and to limit access to only the persons identified in paragraph (b)(4)(i)(A) of this section or to researchers affiliated with other institutions of higher education solely for purposes of collaboration or replication of the research.

(ii) For purposes of paragraph (b)(4)(i) of this section:

(A) An institution of higher education is defined as one that:

(*1*) Admits regular students who have a certificate of graduation from a secondary school or the equivalent of such a certificate;

(*2*) Is legally authorized to provide a postsecondary education program;

(*3*) Awards a bachelor's degree or provides not less than a two-year program acceptable towards such a degree;

(*4*) Is a public or other nonprofit institution; and

(*5*) Is accredited by a nationally recognized accrediting agency or association.

(B) The term ''effective security measures'' means security measures that have been agreed to by interested copyright owners of motion pictures and institutions of higher education;

or, in the absence of such measures, those measures that the institution uses to keep its own highly confidential information secure. If the institution uses the security measures it uses to protect its own highly confidential information, it must, upon a reasonable request from a copyright owner whose work is contained in the corpus, provide information to that copyright owner regarding the nature of such measures.

(5)(i) Literary works, excluding computer programs and compilations that were compiled specifically for text and data mining purposes, distributed electronically where:

(A) The circumvention is undertaken by a researcher affiliated with a nonprofit institution of higher education, or by a student or information technology staff member of the institution at the direction of such researcher, solely to deploy text and data mining techniques on a corpus of literary works for the purpose of scholarly research and teaching;

(B) The copy of each literary work is lawfully acquired and owned by the institution, or licensed to the institution without a time limitation on access;

(C) The person undertaking the circumvention views the contents of the literary works in the corpus solely for the purpose of verification of the research findings; and

(D) The institution uses effective security measures to prevent further dissemination or downloading of literary works in the corpus, and to limit access to only the persons identified in paragraph (b)(5)(i)(A) of this section or to researchers or to researchers affiliated with other institutions of higher education solely for purposes of collaboration or replication of the research.

(ii) For purposes of paragraph (b)(5)(i) of this section:

(A) An institution of higher education is defined as one that:

(1) Admits regular students who have a certificate of graduation from a secondary school or the equivalent of such a certificate;

(2) Is legally authorized to provide a postsecondary education program;

(3) Awards a bachelor's degree or provides not less than a two-year program acceptable towards such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(B) The term ''effective security measures'' means security measures that have been agreed to by interested copyright owners of literary works and institutions of higher education; or, in the absence of such measures, those measures that the institution uses to keep its own highly confidential information secure. If the institution uses the security measures it uses to protect its own highly confidential information, it must, upon a reasonable request from a copyright owner whose work is contained in the corpus, provide information to that copyright owner regarding the nature of such measures.

(6)(i) Literary works or previously published musical works that have been fixed in the form of text or notation, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies:

(A) When a copy or phonorecord of such a work is lawfully obtained by an eligible person, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the market price of an inaccessible copy of the work as made available to the general public through customary channels; or

(B) When such a work is lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

(ii) For the purposes of paragraph (b)(6)(i) of this section, a ''phonorecord of such a work'' does not include a sound recording of a performance of a musical work unless and only to the extent the recording is included as part of an audiobook or e-book.

(7) Literary works consisting of compilations of data generated by medical devices or by their personal corresponding monitoring systems, where such circumvention is undertaken by or on behalf of a patient for the sole

purpose of lawfully accessing data generated by a patient's own medical device or monitoring system. Eligibility for this exemption is not a safe harbor from, or defense to, liability under other applicable laws, including without limitation the Health Insurance Portability and Accountability Act of 1996, the Computer Fraud and Abuse Act of 1986, or regulations of the Food and Drug Administration.

(8) Computer programs that enable wireless devices to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network.

(9) Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smartphone or device, or to permit removal of software from the smartphone or device. For purposes of this paragraph (b)(9), a ''portable all-purpose mobile computing device'' is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is equipped with an operating system primarily designed for mobile use, and is intended to be carried or worn by an individual.

(10) Computer programs that enable smart televisions to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smart television, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For purposes of this paragraph (b)(10), ''smart televisions'' includes both internet-enabled televisions, as well as devices that are physically separate from a television and whose primary purpose is to run software applications that stream authorized video from the internet for display on a screen.

(11) Computer programs that enable voice assistant devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the device, or to permit removal of software from the device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For purposes of this paragraph (b)(11), a ''voice assistant device'' is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is designed to take user input primarily by voice, and is designed to be installed in a home or office.

(12) Computer programs that enable routers and dedicated network devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the router or dedicated network device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For the purposes of this paragraph (b)(12), ''dedicated network device'' includes switches, hubs, bridges, gateways, modems, repeaters, and access points, and excludes devices that are not lawfully owned.

(13) Computer programs that are contained in and control the functioning of a lawfully acquired motorized land vehicle or marine vessel such as a personal automobile or boat, commercial vehicle or vessel, or mechanized agricultural vehicle or vessel, except for programs accessed through a separate subscription service, when circumvention is a necessary step to allow the diagnosis, repair, or lawful modification of a vehicle or vessel function, where such circumvention is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. Eligibility for this exemption is not a safe harbor from, or defense to, liability under other applicable laws, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency.

(14) Computer programs that are contained in and control the functioning of a lawfully acquired device that is

primarily designed for use by consumers, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device, and is not accomplished for the purpose of gaining access to other copyrighted works. For purposes of this paragraph (b)(14):

(i) The ''maintenance'' of a device is the servicing of the device in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that device; and

(ii) The ''repair'' of a device is the restoring of the device to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device. For video game consoles, ''repair'' is limited to repair or replacement of a console's optical drive and requires restoring any technological protection measures that were circumvented or disabled.

(15) Computer programs that are contained in and control the functioning of a lawfully acquired medical device or system, and related data files, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device or system. For purposes of this paragraph (b)(15):

(i) The ''maintenance'' of a device or system is the servicing of the device or system in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that device or system; and

(ii) The ''repair'' of a device or system is the restoring of the device or system to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device or system.

(16)(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates, or is undertaken on a computer, computer system, or computer network on which the computer program operates with the authorization of the owner or operator of such computer, computer system, or computer network, solely for the purpose of good-faith security research.

(ii) For purposes of paragraph (b)(16)(i) of this section, ''good-faith security research'' means accessing a computer program solely for purposes of good-faith testing, investigation, and/or correction of a security flaw or vulnerability, where such activity is carried out in an environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

(iii) Good-faith security research that qualifies for the exemption under paragraph (b)(16)(i) of this section may nevertheless incur liability under other applicable laws, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code, and eligibility for that exemption is not a safe harbor from, or defense to, liability under other applicable laws.

(17)(i) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to enable gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal, local gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game on a personal computer or video game console when necessary to allow preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, that do not require access to an external computer server for gameplay, and that are no longer reasonably available in the commercial marketplace, solely for the purpose of preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(iii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives, or museum to engage in the preservation activities described in paragraph (b)(17)(i)(B) or (b)(17)(ii) of this section.

(iv) For purposes of this paragraph (b)(17), the following definitions shall apply:

(A) For purposes of paragraphs (b)(17)(i)(A) and (b)(17)(ii) of this section, ''complete games'' means video games that can be played by users without accessing or reproducing copyrightable content stored or previously stored on an external computer server.

(B) For purposes of paragraph (b)(17)(i)(B) of this section, ''complete games'' means video games that meet the definition in paragraph (b)(17)(iv)(A) of this section, or that consist of both a copy of a game intended for a personal computer or video game console and a copy of the game's code that was stored or previously stored on an external computer server.

(C) ''Ceased to provide access'' means that the copyright owner or its authorized representative has either issued an affirmative statement indicating that external server support for the video game has ended and such support is in fact no longer available or, alternatively, server support has been discontinued for a period of at least six months; provided, however, that server support has not since been restored.

(D) ''Local gameplay'' means gameplay conducted on a personal computer or video game console, or locally connected personal computers or consoles, and not through an online service or facility.

(E) A library, archives, or museum is considered ''eligible'' if—

(*1*) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(*2*) The library, archives, or museum has a public service mission;

(*3*) The library, archives, or museum's trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(*4*) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(*5*) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by this paragraph (b)(17).

(18)(i) Computer programs, except video games, that have been lawfully acquired and that are no longer reasonably available in the commercial marketplace, solely for the purpose of lawful preservation of a computer program, or of digital materials dependent upon a computer program as a condition of access, by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage. Any electronic distribution, display, or performance made outside of the physical premises of an eligible library, archives, or museum of works preserved under this paragraph may be made to only one user at a time, for a limited time, and only where the library, archives, or museum has no notice that the copy would be used for any purpose other than private study, scholarship, or research.

(ii) For purposes of the exemption in paragraph (b)(18)(i) of this section, a library, archives, or museum is considered ''eligible'' if—

(A) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(B) The library, archives, or museum has a public service mission;

(C) The library, archives, or museum's trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(D) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(E) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by this paragraph (b)(18).

(19) Computer programs that operate 3D printers that employ technological measures to limit the use of material, when circumvention is accomplished solely for the purpose of using alternative material and not for the purpose of accessing design software, design files, or proprietary data.

(20) Computer programs, solely for the purpose of investigating a potential infringement of free and open source computer programs where:

(i) The circumvention is undertaken on a lawfully acquired device or machine other than a video game console, on which the computer program operates;

(ii) The circumvention is performed by, or at the direction of, a party that has a good-faith, reasonable belief in the need for the investigation and has standing to bring a breach of license or copyright infringement claim;

(iii) Such circumvention does not constitute a violation of applicable law; and

(iv) The copy of the computer program, or the device or machine on which it operates, is not used or maintained in a manner that facilitates copyright infringement.

(21) Video games in the form of computer programs, embodied in lawfully acquired physical or downloaded formats, and operated on a general-purpose computer, where circumvention is undertaken solely for the purpose of allowing an individual with a physical disability to use software or hardware input methods other than a standard keyboard or mouse.

(c) *Persons who may initiate circumvention.* To the extent authorized under paragraph (b) of this section, the circumvention of a technological measure that restricts wireless telephone handsets or other wireless devices from connecting to a wireless telecommunications network may be initiated by the owner of any such handset or other device, by another person at the direction of the owner, or by a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person, solely in order to enable such owner or a family member of such owner to connect to a wireless telecommunications network, when such connection is authorized by the operator of such network.

[65 FR 64574, Oct. 27, 2000, as amended at 68 FR 62018, Oct. 31, 2003; 71 FR 68479, Nov. 27, 2006; 74 FR 55139, Oct. 27, 2009; 75 FR 43839, July 27, 2010; 75 FR 47465, Aug. 6, 2010; 77 FR 65278, Oct. 26, 2012; 79 FR 50553, Aug. 25, 2014; 80 FR 65961, Oct. 28, 2015; 83 FR 54028, Oct. 26, 2018; 86 FR 59637, Oct. 28, 2021]

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

Sec.

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202.20 Deposit of copies and phonorecords for copyright registration.
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202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.
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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. 408(f), 702

EDITORIAL NOTE: Nomenclature changes to part 202 appear at 76 FR 27898, May 13, 2011.

§ 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, the producer's 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 that person's name;

(6)(i) 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:

(A) Where the year date in the notice is later than the date of actual publication;

(B) 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; or

(C) 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.

(ii) Provided, however, that in each of the three types of cases described in paragraphs (b)(6)(i)(A) through (C) of this section, 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; and

(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.

(c) *Methods of affixation and positions of the copyright notice on various types of works*—(1) *General.* (i) This paragraph 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 Public Law 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.

(ii) The provisions of this paragraph are applicable to copies publicly distributed on or after December 1, 1981. This paragraph 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.

(2) *Definitions.* For the purposes of this paragraph:

(i) 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.

(ii) 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 paragraph, a work need not consist of textual matter in order to be considered published in ''book form.''

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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 paragraph, a work need not consist of textual matter in order to be considered a ''single-leaf work.''

(viii) A *machine-readable copy* is a copy from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, such as magnetic tapes or disks, punched cards, or the like. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform) and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

(3) *Manner of affixation and position generally.* (i) In all cases dealt with in this paragraph, 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.

(ii) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this paragraph 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 paragraph.

(4) *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:

(i) The title page, if any;

(ii) The page immediately following the title page, if any;

(iii) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;

(iv) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;

(v) The first page of the main body of the work;

(vi) The last page of the main body of the work;

(vii) Any page between the front page and the first page of the main body of the work, if:

(A) There are no more than ten pages between the front page and the first page of the main body of the work; and

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

(viii) Any page between the last page of the main body of the work and back page, if:

(A) There are no more than ten pages between the last page of the main body of the work and the back page; and

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

(ix) 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 (c)(4)(i) through (viii) of this section, a notice is acceptable if it is located:

(A) As a part of, or adjacent to, the masthead;

(B) 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

(C) 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.

(x) In the case of a musical work, in addition to any of the locations listed in paragraphs (c)(4)(i) through (ix) of this section, a notice is acceptable if it is located on the first page of music.

(5) *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.

(6) *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:

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

(A) Under the title of the contribution on that page;

(B) Adjacent to the contribution; or

(C) On the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

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

(A) Under a title appearing at or near the beginning of the contribution;

(B) On the first page of the main body of the contribution;

(C) Immediately following the end of the contribution; or

(D) On any of the pages where the contribution appears, if:

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

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

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

(iii) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (c)(6)(i) and (ii) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(iv) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to ''bear its own notice'' if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution:

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

(B) 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.

(7) *Works reproduced in machine-readable copies.* For works reproduced in machine-readable copies, each of the following constitutes an example of acceptable methods of affixation and position of notice:

(i) 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;

(ii) A notice that is displayed at the user's terminal at sign on;

(iii) A notice that is continuously on terminal display; or

(iv) 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.

(8) *Motion pictures and other audiovisual works.* (i) The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located:

(A) With or near the title;

(B) With the cast, credits, and similar information;

(C) At or immediately following the beginning of the work; or

(D) At or immediately preceding the end of the work.

(ii) 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 (c)(8)(i) 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.

(iii) 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 (c)(8)(i) of this section, on the housing or container, if it is a permanent receptacle for the work.

(9) *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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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:

(A) To the reproduction itself;

(B) To the margin, selvage, or reverse side of the material at frequent and regular intervals; or

(C) 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.

(v) 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.

[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; 66 FR 34373, June 28, 2001; 66 FR 40322, Aug. 2, 2001; 77 FR 18707, Mar. 28, 2012; 77 FR 20988, Apr. 9, 2012; 82 FR 9359, Feb. 6, 2017; 82 FR 42736, Sept. 12, 2017]

§ 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.

(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 examples 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. This class also includes published and unpublished architectural works.

(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)(4) 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. This class includes periodicals (including newspapers); annuals; and the journals, proceedings, transactions, etc. of societies.

(2) *Submission of application for registration.* For purposes of registration, an applicant may submit an application for registration of individual works and certain groups of works electronically through the Copyright Office's website, or by using the printed forms prescribed by the Register of Copyrights.

(i) *Online applications.* An applicant may submit a claim through the Office's electronic registration system using the Standard Application, the Single Application, or the applications designated in § 202.4.

(A) The Standard Application may be used to register a work under sections 408(a) and 409 of title 17, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation. The Standard Application may also be used to register a unit of publication under paragraph (b)(4) of this section, or a sound recording and a literary, dramatic, or musical work under paragraphs (b)(1)(iv)(A) through (C) of this section.

(B)(*1*) The Single Application may be used only to register one work by one author. All of the content appearing in the work must be created by the same individual. The work must be owned by

[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.

the author who created it, and the author and the claimant must be the same individual.

(*2*) The Single Application may be used to register one sound recording and one musical work, dramatic work, or literary work if the conditions set forth in paragraphs (b)(1)(iv)(A) through (C) and (b)(2)(i)(B)(*1*) of this section have been met.

(*3*) The following categories of works may *not* be registered using the Single Application: collective works, databases, websites, architectural works, choreographic works, works made for hire, works by more than one author, works with more than one owner, or works eligible for registration under § 202.4 or paragraph (b)(4) or (5) of this section.

(C) An online application requires a payment of the filing fee through an electronic funds transfer, credit or debit card, or through a Copyright Office deposit account.

(D) Deposit materials in support of an online application may be submitted electronically in a digital format (if eligible) along with the application and filing fee, or an applicant may send physical copies or phonorecords as necessary to satisfy the best edition requirements, by mail to the Copyright Office, using the required shipping slip generated during the online registration process.

(ii) *Paper applications.* (A) An applicant may submit an application using one of the printed forms prescribed by the Register of Copyrights. Each form corresponds to one of the administrative classes set forth in paragraph (b)(1) of this section. These forms are designated ''Form TX,'' ''Form PA,'' ''Form VA,'' ''Form SR,'' and ''Form SE.'' These forms may be used to register a work under sections 408(a) and 409 of title 17, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation.

(B) Copies of the printed forms are available on the Copyright Office's website (*www.copyright.gov*) and upon request to the Copyright Public Information Office, Library of Congress. Printed form applications may be completed and submitted by completing a printed version or using a PDF version of the applicable Copyright Office application form and mailing it together with the other required elements, *i.e.*, physically tangible deposit copies and/or materials, and the required filing fee, all elements being placed in the same package and sent by mail or hand-delivered to the Copyright Office.

(C) A continuation sheet (Form CON) is appropriate only in the case when a printed form application is used and where additional space is needed by the applicant to provide all relevant information concerning a claim to copyright. An application may include more than one continuation sheet.

(iii) *Application class.* 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 that fall into two or more classes, the application should be submitted in the class most appropriate to the predominant type of authorship 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 claimed, the application shall be submitted for registration in Class SR.

(3) [Reserved]

(4) *Registration as one work.* For the purpose of registration on one application and upon the payment of one filing fee, the following shall be considered one work: In the case of published works, all copyrightable elements that are otherwise recognizable as self-contained works, that are included in the same unit of publication, and in which the copyright claimant is the same.

(5) *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 one application, deposit, and filing fee, a group 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-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 the same calendar year; and

(G) The deposit accompanying the application complies with § 202.20(c)(2)(vii)(D).

(ii) A group registration may be made on one application for both a database published on one date, or if unpublished, created on one date, and also for its copyrightable revisions, including updates covering a three-month period in the same 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 that best reflects the subject matter of the material in the database as set forth in paragraph (b)(2)(ii)(A) of this section, completed in accordance with the instructions provided by the Copyright Office on its website or in materials published by the Office. Applications for group registration of an automated database consisting predominantly of photographs may be submitted electronically only after consultation and with the permission and under the direction of the Visual Arts Division.

(B) The appropriate filing fee, as required in § 201.3(c); and

(C) The deposit required by § 202.20(c)(2)(vii)(D).

(6)–(10) [Reserved]

(11) *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 by the author in his or her own name as copyright claimant;[2]

(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.

(c) *Application for registration.* (1) As a general rule, an application for copyright registration may be submitted by any author or other copyright claimant of a work, the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner. A Single Application, however, may be submitted only by the author/claimant or by a duly authorized agent of the author/claimant, provided that the agent is identified in the application as the correspondent.

(2) All applications shall include the information required by the particular form, and shall be accompanied by the appropriate filing fee, as required in

[2] An *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.

§ 201.3(c) of this chapter, and the deposit required under 17 U.S.C. 408 and § 202.20, § 202.21, or § 202.4, as appropriate.

(3) All applications submitted for registration shall include a certification.

(i) As a general rule, the application may be certified by an author, claimant, an owner of exclusive rights, or a duly authorized agent of the author, claimant, or owner of exclusive rights. A Single Application, however, may be certified only by the author/claimant or by a duly authorized agent of the author/claimant.

(ii) For online applications, the certification shall include the typed name of a party identified in paragraph (c)(3)(i) of this section. For paper applications, the certification shall include the typed, printed, or handwritten signature of a party identified in paragraph (c)(3)(i) of this section, and if the signature is handwritten it shall be accompanied by the typed or printed name of that party.

(iii) The declaration shall state that the information provided within the application is correct to the best of the certifying party's knowledge.

(iv) For online applications, the date of the certification shall be automatically assigned by the electronic registration system on the date the application is received by the Copyright Office. For paper applications, the certification shall include the month, day, and year that the certification was signed by the certifying party.

(v) 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.

(4) In the case of applications for registration made under paragraphs (b)(4) through (5) of this section or under § 202.4, the ''year of creation,'' ''year of completion,'' or ''year in which creation of this work was completed'' means the latest year in which the creation of any copyrightable element was completed.

(Pub. L. 94–553; secs. 408, 409, 410, 702)

[43 FR 966, Jan. 5, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 202.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 202.4 Group registration.

(a) *General.* This section prescribes conditions for issuing a registration for a group of related works under section 408(c) of title 17 of the United States Code.

(b) *Definitions.* (1) For purposes of this section, unless otherwise specified, the terms used have the meanings set forth in §§ 202.3, 202.13, and 202.20.

(2) For purposes of this section, the term *Library* means the Library of Congress.

(3) For purposes of this section, a *periodical* is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations.

(c) *Group registration of unpublished works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of unpublished works may be registered in Class TX, PA, VA, or SR with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the works in the group must be unpublished, and they must be registered in the same administrative class.

(2) Generally, the applicant may include up to ten works in the group. If the conditions set forth in § 202.3(b)(1)(iv)(A) through (C) have been met, the applicant may include up to ten sound recordings and ten musical works, literary works, or dramatic works in the group.

(3) The group may include individual works, joint works, or derivative works, but may not include compilations, collective works, databases, or websites.

(4) The applicant must provide a title for each work in the group.

(5) All the works must be created by the same author or the same joint authors, and the author and claimant information for each work must be the same.

(6) The works may be registered as anonymous works, pseudonymous works, or works made for hire if they are identified in the application as such.

(7) The applicant must identify the authorship that each author or joint author contributed to the works, and the authorship statement for each author or joint author must be the same. Claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(8) The applicant must complete and submit the online application designated for a group of unpublished works. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(9) The applicant must submit one complete copy or phonorecord of each work. Each work must be contained in a separate electronic file that complies with § 202.20(b)(2)(iii). The files must be submitted in one of the electronic formats approved by the Office, they must be assembled in an orderly form, and they must be uploaded to the electronic registration system. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(10) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(8) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(d) *Group registration of serials.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of serial issues may be registered with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Eligible works.* (i) All the issues in the group must be serials.

(ii) The group must include at least two issues.

(iii) Each issue in the group must be an all-new collective work that has not been previously published, each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.

(iv) Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.

(v) The serial generally must be published at intervals of a week or longer. All of the issues must be published within three months, under the same continuing title, within the same calendar year, and the applicant must specify the date of publication for each issue in the group.

(2) *Application.* The applicant must complete and submit the online application designated for a group of serial issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. Copies submitted under this paragraph (d)(3) will be considered solely for the purpose of registration under 17 U.S.C. 408, and will not satisfy the mandatory deposit requirement under 17 U.S.C. 407. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be

compressed to comply with the requirement in this paragraph (d)(3).

(4) *Exceptional cases.* In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (d)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(e) *Group registration of newspapers.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newspaper issues may be registered with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Issues must be newspapers.* All the issues in the group must be newspapers. For purposes of this section, a newspaper is a periodical (as defined in paragraph (b)(3) of this section) that is 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.

(2) *Requirements for newspaper issues.* Each issue in the group must be an all-new collective work that has not been previously published (except where earlier editions of the same newspaper are included in the deposit together with the final edition), each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.

(3) *Author and claimant.* Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.

(4) *Time period covered.* All the issues in the group must be published under the same continuing title, and they must be published within the same calendar month and bear issue dates within that month. The applicant must identify the earliest and latest date that the issues were published.

(5) *Application.* The applicant must complete and submit the online application designated for a group of newspaper issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(6) *Deposit.* (i) The applicant must submit one complete copy of the final edition of each issue published in the calendar month designated in the application. Each submission may also include earlier editions of the same newspaper issue, provided that they were published on the same date as the final edition. Each submission may also include local editions of the newspaper issue that were published within the same metropolitan area, but may not include national or regional editions that were distributed outside that metropolitan area.

(ii) The issues must be submitted in a digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through Digital Rights Management (DRM)). The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement.

(f) *Group registration of newsletters.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newsletter issues may be registered with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Eligible works.* (i) All the issues in the group must be newsletters. For purposes of this section, a newsletter is a serial that is published and distributed by mail, electronic media, or

other medium, including paper, email, or download. The newsletter must contain news or information that is chiefly of interest to a special group, such as trade and professional associations, colleges, schools, or churches. Newsletters are typically distributed through subscriptions, but are not distributed through newsstands or other retail outlets.

(ii) The group must include at least two issues.

(iii) Each issue in the group must be an all-new issue or an all-new collective work that has not been previously published, and each issue must be fixed and distributed as a discrete, self-contained work.

(iv) The author and claimant for each issue must be the same person or organization.

(v) All the issues in the group must be published under the same continuing title, they must be published within the same calendar month and bear issue dates within that month, and the applicant must identify the earliest and latest date that the issues were published during that month.

(2) *Application*. The applicant must complete and submit the online application designated for a group of newsletter issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit*. The applicant must submit one complete copy of each issue that is included in the group. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement. Copies submitted under this paragraph will be considered solely for the purpose of registration under 17 U.S.C. 408, and will not satisfy the mandatory deposit requirement under 17 U.S.C. 407.

(4) *Exceptional cases*. In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (f)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(g) *Group registration of contributions to periodicals*. Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of contributions to periodicals may be registered in Class TX or Class VA with one application, one filing fee, and the required deposit, if the following conditions are met:

(1) All the contributions in the group must be created by the same individual.

(2) The copyright claimant must be the same person or organization for all the contributions.

(3) The contributions must not be works made for hire.

(4) Each work must be first published as a contribution to a periodical, and all the contributions must be first published within a twelve-month period (e.g., January 1, 2015 through December 31, 2015; February 1, 2015 through January 31, 2016).

(5) If any of the contributions were first published before March 1, 1989, those works must bear a separate copyright notice, the notice must contain the copyright owner's name (or an abbreviation by which the name can be recognized, or a generally known alternative designation for the owner), and the name that appears in each notice must be the same.

(6) The applicant must complete and submit the online application designated for a group of contributions to periodicals. The application must identify each contribution that is included in the group, including the date of publication for each contribution and the

periodical in which it was first published. The application may be submitted by any of the parties listed in § 202.3(c)(1). The application should be filed in Class TX if a majority of the contributions predominantly consist of text, and the application should be filed in Class VA if a majority of the contributions predominantly consist of photographs, illustrations, artwork, or other works of the visual arts.

(7) The appropriate filing fee, as required by § 201.3(c) of this chapter, must be included with the application or charged to an active deposit account.

(8) The applicant must submit one copy of each contribution that is included in the group, either by submitting the entire issue of the periodical where the contribution was first published, the entire section of the newspaper where it was first published, or the specific page(s) from the periodical where the contribution was first published. The contributions must be contained in separate electronic files that comply with § 202.20(b)(2)(iii). The files must be submitted in a PDF, JPG, or other electronic format approved by the Office, and they must be uploaded to the electronic registration system, preferably in a .zip file containing all the files. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(9) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (g)(6) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(h) *Group registration of unpublished photographs.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of unpublished photographs may be registered in Class VA with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the works in the group must be photographs.

(2) The group must include no more than 750 photographs, and the application must specify the total number of photographs that are included in the group.

(3) All the photographs must be created by the same author.

(4) The copyright claimant for all the photographs must be the same person or organization.

(5) The photographs may be registered as works made for hire if all the photographs are identified in the application as such.

(6) All the photographs must be unpublished.

(7) The applicant must provide a title for the group as a whole

(8) The applicant must complete and submit the online application designated for a group of unpublished photographs. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(9) The applicant must submit one copy of each photograph in one of the following formats: JPEG, GIF, or TIFF. The photographs may be uploaded to the electronic registration system together with the required numbered list, preferably in a .zip file containing all the photographs. The file size for each uploaded file must not exceed 500 megabytes; the photographs may be compressed to comply with this requirement. Alternatively, the photographs and the required numbered list may be saved on a physical storage device, such as a flash drive, CD–R, or DVD–R, and delivered to the Copyright Office together with the required shipping slip generated by the electronic registration system.

(10) The applicant must submit a sequentially numbered list containing a title and file name for each photograph in the group (matching the corresponding file names for each photograph specified in paragraph (h)(9) of this section). The title and file name for a particular photograph may be the same. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of

the group and the case number assigned to the application by the electronic registration system (e.g., ''Title Of Group Case Number 16283927239.xls'').

(11) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (h)(8) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(i) *Group registration of published photographs.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of published photographs may be registered in Class VA with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) All the works in the group must be photographs.

(2) The group must include no more than 750 photographs, and the application must specify the total number of photographs that are included in the group.

(3) All the photographs must be created by the same author.

(4) The copyright claimant for all the photographs must be the same person or organization.

(5) The photographs may be registered as works made for hire if all the photographs are identified in the application as such.

(6) All the photographs must be published within the same calendar year, and the applicant must specify the earliest and latest date that the photographs were published during the year.

(7) The applicant must provide a title for the group as a whole.

(8) The applicant must complete and submit the online application designated for a group of published photographs. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(9) The applicant must submit one copy of each photograph in one of the following formats: JPEG, GIF, or TIFF. The photographs may be uploaded to the electronic registration system together with the required numbered list, preferably in a .zip file containing all the photographs. The file size for each uploaded file must not exceed 500 megabytes; the photographs may be compressed to comply with this requirement. Alternatively, the photographs and the required numbered list may be saved on a physical storage device, such as a flash drive, CD–R, or DVD–R, and delivered to the Copyright Office together with the required shipping slip generated by the electronic registration system.

(10) The applicant must submit a sequentially numbered list containing the title, file name, and month and year of publication for each photograph in the group (matching the corresponding file names for each photograph specified in paragraph (i)(9) of this section). The title and file name for a particular photograph may be the same. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of the group and the case number assigned to the application by the electronic registration system (e.g., ''Title Of Group Case Number 16283927239.xls'').

(11) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (i)(8) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(j) *Group registration of short online literary works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of literary works may be registered in Class TX with one application, the required deposit, and the filing fee required by § 201.3(c) if the following conditions are met:

(1) The group may include up to 50 short online literary works, and the application must specify the total number of short online literary works that are included in the group. For purposes of this section, a *short online literary*

work is a work consisting of text that contains at least 50 words and no more than 17,500 words, such as a poem, short story, article, essay, column, blog entry, or social media post. The work must be published as part of a website or online platform, including online newspapers, social media websites, and social networking platforms. The group may not include computer programs, audiobooks, podcasts, or emails. Claims in any form of authorship other than ''text'' or claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(2) All of the works must be published within a three-calendar-month period, and the application must identify the earliest and latest date that the works were published.

(3) All the works must be created by the same individual, or jointly by the same individuals, and each creator must be named as the copyright claimant or claimants for each work in the group.

(4) The works must not be works made for hire.

(5) The applicant must provide a title for each work and a title for the group as a whole.

(6) The applicant must complete and submit the online application designated for a group of short online literary works. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(7) The applicant must submit one complete copy of each work. The works must be assembled in an orderly form with each work in a separate digital file. The file name for each work must match the title as submitted on the application. All of the works must be submitted in one of the electronic formats approved by the Office, and must be uploaded to the electronic registration system in a .ZIP file. The file size for each uploaded .ZIP file must not exceed 500 megabytes.

(8) The applicant must submit a sequentially numbered list containing a title/file name for each work in the group. The list must also include the publication date and word count for each work. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of the group and the case number assigned to the application by the electronic registration system (*e.g.*, ''Title Of Group Case Number 16283927239.xls'').

(9) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (j)(6) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(k) *Group registration of works on an album.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of two or more musical works, or two or more sound recordings and any associated literary, pictorial, or graphic works, may be registered with one application, the required deposit, and the filing fee required by § 201.3 of this chapter, if the following conditions are met:

(1) *Eligible works.* (i) All of the works in the group must be contained on the same *album.* For the purposes of this section, an *album* is a single physical or electronic unit of distribution containing at least two musical works and/or sound recordings embodied in a phonorecord, including any associated literary, pictorial, or graphic works distributed with the unit.

(ii) The group may include:

(A) Up to twenty musical works; or

(B) Up to twenty sound recordings and any associated literary, pictorial, or graphic works included with the same album.

(iii) The applicant must provide a title for the album and a title for each musical work or sound recording claimed in the group.

(iv) All of the works in the group must be created by the same author or the works must have a common joint author, and the copyright claimant or co-claimants for each work must all be the same person(s) or organization. The works may be registered as works made for hire if they are identified in the application as such.

(v) As a general rule, all of the works must be first published on the same album, the date and nation of publication for each work must be specified in the application, and the nation of publication for each work must be the same. A musical work or sound recording that was previously published as an individual work only (*e.g.*, as a single) may be included in the claim if the date of first publication for that work is listed separately in the application.

(2) *Application.* If the group consists of sound recordings and, as applicable, any associated literary, pictorial, or graphic works, the applicant must complete and submit the application designated for ''sound recordings from an album.'' If the group consists of musical works, the applicant must complete and submit the application designated for ''musical works from an album.'' The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* (i) For claims in works first published in the United States submitted with the application for ''sound recordings from an album,'' the applicant must submit two complete phonorecords containing the best edition of each recording, and two complete copies of any associated literary, pictorial, or graphic works that are included in the group. For claims in works first published outside the United States submitted with this application, the applicant must submit one complete phonorecord of the work either as first published or of the best edition. A phonorecord will be considered complete if it satisfies the requirements set forth in § 202.19(b)(2). The deposit may be submitted in a digital form if the album has been distributed solely in a digital format, and if the requirements set forth in paragraph (k)(3)(iii) of this section have been met.

(ii) For claims submitted with the application for ''musical works from an album,'' the applicant must submit one complete phonorecord of each musical work that is included in the group.

(iii) The deposit may be submitted in a digital form if the following requirements have been met. Each work must be contained in a separate electronic file. The files must be assembled in an orderly form, they must be submitted in one of the electronic formats approved by the Office, and they must be uploaded to the electronic registration system as individual electronic files (not .zip files). The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement. The file name for each work must match the title as submitted on the application.

(4) *Special relief.* In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (k)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(l)–(n) [Reserved]

(o) *Secure test items.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of test items may be registered in Class TX with one application, one filing fee, and identifying material, if the conditions set forth in § 202.13(c) and (d) have been met.

(p) *Refusal to register.* The Copyright Office may refuse registration if the applicant fails to satisfy the requirements for registering a group of related works under this section or § 202.3(b)(5).

(q) *Cancellation.* If the Copyright Office issues a registration for a group of related works and subsequently determines that the requirements for that group option have not been met, and if the claimant fails to cure the deficiency after being notified by the Office, the registration may be cancelled in accordance with § 201.7 of this chapter.

(r) *The scope of a group registration.* When the Office issues a group registration under paragraph (d), (e), or (f) of this section, the registration covers each issue in the group and each issue is registered as a separate work or a separate collective work (as the case may be). When the Office issues a group registration under paragraph (c), (g), (h), (i), (j), (k), or (o) of this section, the registration covers each work in the group and each work is registered

as a separate work. For purposes of registration, the group as a whole is not considered a compilation, a collective work, or a derivative work under section 101, 103(b), or 504(c)(1) of title 17 of the United States Code.

[82 FR 29413, June 29, 2017, as amended at 82 FR 52228, Nov. 13, 2017; 83 FR 2547, Jan. 18, 2018; 83 FR 4146, Jan. 30, 2018; 83 FR 61549, Nov. 30, 2018; 84 FR 3699, Feb. 13, 2019; 84 FR 3698, Feb. 13, 2019; 84 FR 60918, 60919, Nov. 12, 2019; 85 FR 31982, May 28, 2020; 85 FR 37346, June 22, 2020; 86 FR 10825, Feb. 23, 2021]

§ 202.5 Reconsideration Procedure for Refusals to Register.

(a) *General.* This section prescribes rules pertaining to procedures for administrative review of the Copyright Office's refusal to register a claim to copyright, a mask work, or a vessel design upon a finding by the Office that the application for registration does not satisfy the legal requirements of title 17 of the United States Code. If an applicant's initial claim is refused, the applicant is entitled to request that the initial refusal to register be reconsidered.

(b) *First reconsideration.* Upon receiving a written notification from the Registration Program explaining the reasons for a refusal to register, an applicant may request that the Registration Program reconsider its initial decision to refuse registration, subject to the following requirements:

(1) An applicant must request in writing that the Registration Program reconsider its decision. A request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information. The Registration Program will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d) of this chapter must accompany the first request for reconsideration.

(3) The first request for reconsideration and the applicable fee must be postmarked, dispatched by a commercial carrier, courier, or messenger, or otherwise received by the Office, no later than three months from the date that appears in the written notice from the Registration Program of its decision to refuse registration. When the ending date for the three-month time period falls on a weekend or a Federal holiday, the ending day of the three-month period shall be extended to the next Federal work day.

(4) If the Registration Program decides to register an applicant's work in response to the first request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. However, if the Registration Program again refuses to register the work, it will send the applicant a written notification stating the reasons for refusal within four months of the date on which the first request for reconsideration is received by the Registration Program. When the ending date for the four-month time period falls on a weekend or a Federal holiday, the ending day of the four-month period shall be extended to the next Federal work day. Failure by the Registration Program to send the written notification within the four-month period shall not result in registration of the applicant's work.

(c) *Second reconsideration.* Upon receiving written notification of the Registration Program's decision to refuse registration in response to the first request for reconsideration, an applicant may request that the Review Board reconsider the Registration Program's refusal to register, subject to the following requirements:

(1) An applicant must request in writing that the Review Board reconsider the Registration Program's decision to refuse registration. The second request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information, and must address the reasons stated by the Registration Program for refusing registration upon first reconsideration. The Board will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d) of this chapter must accompany the second request for reconsideration.

(3) The second request for reconsideration and the applicable fee must be postmarked, dispatched by a commercial carrier, courier, or messenger, or

otherwise received by the Office no later than three months from the date that appears in the Registration Program's written notice of its decision to refuse registration after the first request for reconsideration. When the ending date for the three-month time period falls on a weekend or a Federal holiday, the ending day of the three-month period shall be extended to the next Federal work day.

(4) If the Review Board decides to register an applicant's work in response to a second request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. If the Review Board upholds the refusal to register the work, it will send the applicant a written notification stating the reasons for refusal.

(d) *Submission of reconsiderations.* (1) All submissions for reconsideration should be mailed to the address specified in §201.1(c) of this chapter.

(2) The first page of the written request must contain the Copyright Office control number and clearly indicate either ''FIRST RECONSIDERATION'' or ''SECOND RECONSIDERATION,'' as appropriate, on the subject line.

(e) *Suspension or waiver of time requirements.* For any particular request for reconsideration, the provisions relating to the time requirements for submitting a request under this section may be suspended or waived, in whole or in part, by the Register of Copyrights upon a showing of good cause. Such suspension or waiver shall apply only to the request at issue and shall not be relevant with respect to any other request for reconsideration from that applicant or any other applicant.

(f) *Composition of the Review Board.* The Review Board shall consist of three members; the first two members are the Register of Copyrights and the General Counsel or their respective designees. The third member will be designated by the Register.

(g) *Final agency action.* A decision by the Review Board in response to a second request for reconsideration constitutes final agency action.

[69 FR 77636, Dec. 28, 2004, as amended at 70 FR 7177, Feb. 11, 2005; 73 FR 37839, July 2, 2008; 78 FR 42875, July 18, 2013; 81 FR 62373, Sept. 9, 2016; 82 FR 9359, Feb. 6, 2017; 82 FR 21697, May 10, 2017; 85 FR 19668, Apr. 8, 2020]

§ 202.6 Supplementary registration.

(a) *General.* This section prescribes conditions relating to the filing of an application for supplementary registration under section 408(d) of title 17 of the United States Code to correct an error in a copyright registration or to amplify the information given in a registration. No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this section. As an exception, where it is discovered that a basic registration contains an error caused by the Copyright Office's own action, the Office will take appropriate measures to rectify its mistake.

(b) *Definitions.* (1) A *basic registration* means any of the following:

(i) A copyright registration made under sections 408, 409, and 410 of title 17 of the United States Code;

(ii) A renewal registration made under section 304 of title 17 of the United States Code; or

(iii) A copyright registration or a renewal registration made under title 17 of the United States Code as it existed before January 1, 1978.

(2) A *supplementary registration* means a registration issued under section 408(d) of title 17 of the United States Code and the provisions of this section.

(c) *Persons entitled to file an application for supplementary registration.* 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.

(d) *Basis for issuing a supplementary registration.* (1) Supplementary registration may be made either to correct or to amplify the information in a basic registration.

(2) A *correction* is appropriate if information in the basic registration was incorrect at the time that basic registration was made.

(3) An *amplification* is appropriate:

(i) 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

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

(4) Supplementary registration is not appropriate:

(i) 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;

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

(iii) To correct or amplify the information set forth in a basic registration that has been cancelled under § 201.7 of this chapter.

(5) If an 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 if clear, convincing, and 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.

(6) In general, the Copyright Office will not issue a supplementary registration for a basic registration made under title 17 of the United States Code as it existed before January 1, 1978. In an exceptional case, the Copyright Office may issue a supplementary registration for such a registration, if the correction or amplification is supported by clear, convincing, and objective documentation.

(e) *Application for supplementary registration.* (1) To seek a supplementary registration for a work registered in Class TX, PA, VA, SR, or SE, an unpublished collection, or a unit of publication registered under § 202.3, or a group of related works registered under § 202.4, an applicant must complete and submit the online application designated for supplementary registration.

(2) To seek a supplementary registration for a group of unpublished works registered under § 202.4(c), a group of short online literary works registered under § 202.4(j), or a group of works published on the same album registered under § 202.4(k), an applicant must complete and submit the online application designated for supplementary registration after consultation with and under the direction of the Office of Registration Policy & Practice.

(3) To seek a supplementary registration for a database that consists predominantly of photographs registered under § 202.3(b)(5), an applicant must complete and submit the online application designated for supplementary registration after consultation with and under the direction of the Visual Arts Division.

(4) To seek a supplementary registration for a restored work registered under § 202.12, a database that does not consist predominantly of photographs registered under § 202.3(b)(5), or a renewal registration, an applicant must complete and submit an application using Form CA.

(5) Before submitting the application, the applicant must sign a certification stating that the applicant reviewed a copy of the certificate of registration for the basic registration that will be corrected or amplified by the supplementary registration. To obtain a copy of the certificate, the applicant may submit a written request to the Records Research and Certification Section using the procedure set forth in Chapter 2400 of the *Compendium of*

U.S. Copyright Office Practices, Third Edition.

(6) The appropriate filing fee, as required by §201.3(c) of this chapter, must be included with the application or charged to an active deposit account. At the Office's discretion, the applicant may be required to pay an additional fee to make a copy of the certificate of registration for the basic registration that will be corrected or amplified by the supplementary registration.

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

(8) In an exceptional case, the Copyright Office may waive the requirements set forth in paragraph (e)(1) or (2)of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(f) *Effect of supplementary registration*. (1) When the Copyright Office completes a supplementary registration, it will issue a certificate of supplementary registration bearing a new registration number in the appropriate class. The Office will cross-reference the records for the basic registration and the supplementary registration by placing a note in each record that identifies the registration number and effective date of registration for the related registration.

(2) As provided in section 408(d) of title 17 of the United States Code, 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.

[82 FR 27427, June 15, 2017, as amended at 82 FR 42738, Sept. 12, 2017; 83 FR 61550, Nov. 30, 2018; 85 FR 19668, Apr. 8, 2020; 85 FR 37347, June 22, 2020; 86 FR 10826, Feb. 23, 2021]

§§ 202.7–202.9 [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.

(b) *Definitions*. (1) For the purposes of this section, 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.

(2) Unless otherwise specified, all other terms have the meanings set forth in §§ 202.3 and 202.20.

(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) *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.

(3) *Registration limited to one architectural work.* For published and unpublished architectural works, an application may cover only one architectural work. Multiple architectural works may not be registered using one application. For works such as tract housing, one house model constitutes one work, including all accompanying floor plan options, elevations, and styles that are applicable to that particular model. 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.

(4) *Online application.* (i) The applicant must complete and submit the Standard Application. The application should identify the title of the building. If the architectural work was embodied in unpublished plans or drawings on or before December 1, 1990, and if the building was constructed before January 1, 2003, the application should also provide the date that the construction was completed.

(ii) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(4)(i) of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(5) *Deposit requirements.* (i) For designs of constructed or unconstructed buildings, the applicant must submit one complete copy in visually perceptible form of the most finished form of an architectural drawing showing the overall form of the building (*i.e.*, exterior elevations of the building when viewed from the front, rear, and sides), and any interior arrangements of spaces and/or design elements in which copyright is claimed (*i.e.*, walls or other permanent structures that divide the interior into separate rooms and spaces). The deposit should disclose the name(s) of the architect(s) and draftsperson(s) and the building site, if known. For designs of constructed buildings, the applicant also must submit identifying material in the form of photographs complying with § 202.21, which clearly show several exterior and interior views of the architectural work being registered.

(ii) The deposit may be submitted in any form that allows the Copyright Office to access, perceive, and examine the entire copyrightable content of the work being registered, including by uploading the complete copy and identifying material in an acceptable file format to the Office's electronic registration system. Deposits uploaded to the electronic registration system will be considered solely for the purpose of registration under section 408 of title 17 of the United States Code, and will not satisfy the mandatory deposit requirement under section 407 of title 17 of the United States Code.

(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*—(i) *Published 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.

(ii) *Unpublished building designs.* The designs of buildings that were unconstructed and embodied in unpublished plans or drawings on December 1, 1990, and remained unconstructed on December 31, 2002.

[57 FR 45310, Oct. 1, 1992, as amended at 68 FR 38630, June 30, 2003; 84 FR 16785, Apr. 23, 2019]

§ 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 17 U.S.C. 104(A)(g)(6) and (8) 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) *Application.* Applications for registration for single works restored to copyright protection under the URAA should be made on Form GATT. Copies of this form may be obtained from the Office's website or by contacting the Public Information Office at (202) 707–3000. Applicants should submit the completed application with the appropriate filing fee and deposit copies and materials required by paragraph (c)(3) of this section in the same package by mail or electronically, in accordance with instructions for submission and payment provided on the Office's website or Form GATT itself.

(2) *Fee*—(i) *Amount.* The filing fee for registering a copyright claim in a restored work is prescribed in § 201.3(c).

(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 U.S. Copyright Office. 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, visit the Copyright Office website or write to the address specified in § 201.1 of this chapter and request a copy of Circular 5.

(C) *Credit cards.* For GATT registrations the Copyright Office will accept most major credit cards. 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.

(3) *Deposit*—(i) *General.* The deposit for a work registered as a restored work under 17 U.S.C. 104A, except for those works listed in paragraphs (c)(3)(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)(3)(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 submit an alternative deposit under a grant of special relief under § 202.20(d). In such a case, the applicant should indicate in writing why the deposit preferences cannot be met, and submit alternative identifying materials 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 Division of the Registration Program for delivery instructions. The telephone number is: (202) 707–6040; the fax number is: (202) 707–1236.

(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 works.

[60 FR 50422, Sept. 29, 1995, as amended at 64 FR 12902, Mar. 16, 1999; 64 FR 29522, June 1, 1999; 71 FR 31092, June 1, 2006; 72 FR 36888, July 6, 2007; 73 FR 37839, July 2, 2008; 78 FR 42875, July 18, 2013; 82 FR 9359, Feb. 6, 2017; 85 FR 19668, Apr. 8, 2020]

§ 202.13 Secure tests.

(a) *General.* This section prescribes rules pertaining to the registration of secure tests or a group of test items prepared for use in a secure test.

(b) *Definitions.* For purposes of this section—

(1) A *secure test* is a nonmarketed test administered under supervision at specified centers on scheduled dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage or secure electronic storage following each administration. A test otherwise meeting the requirements of this paragraph shall be considered a secure test if it normally is administered at specified centers but is being administered online during the national emergency concerning the COVID–19 pandemic, provided the test administrator employs measures to maintain the security and integrity of the test that it reasonably determines to be substantially equivalent to the security and integrity provided by in-person proctors.

(2) A test is *nonmarketed* if copies of the test are not sold, but instead are distributed and used in such a manner that the test sponsor or publisher retains ownership and control of the copies.

(3) A test is administered *under supervision* if test proctors or the equivalent supervise the administration of the test.

(4) A *specified center* is a place where test takers are physically assembled at the same time.

(5) A *test item* is comprised of a question (or ''stem''), the correct answer to that question, any incorrect answer choices (or ''distractors''), and any associated material, such as a narrative passage or diagram, and each item shall be considered one work. A single narrative, diagram, or other prefatory material, followed by multiple sets of related questions and correct or incorrect answers shall together be considered one item.

(c) *Deposit requirements.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a secure test or a group of test items prepared for use in a secure test may be registered with identifying material, and the filing and examination fees required by § 201.3(c) and (d), if the following conditions are met:

(1) The applicant must complete and submit a Standard Application. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(2) In case of a secure test, the applicant must submit a redacted copy of the entire test. In the case of a group of test items prepared for use in a secure test, the applicant must submit a redacted copy of each test item. In all cases the redacted copy must contain a sufficient amount of visible content to reasonably identify the work(s). In addition, the applicant must complete

and submit the secure test questionnaire that is posted on the Copyright Office's website. The questionnaire and the redacted copy must be contained in separate electronic files, and each file must be uploaded to the electronic registration system in Portable Document Format (PDF). The Copyright Office will review these materials to determine if the work(s) qualify for an examination under secure conditions. If they appear to be eligible, the Copyright Office will contact the applicant to schedule an appointment to examine an unredacted copy of the work(s). The examination may be conducted in-person or through remote access as directed by the instructions provided on the Office's website.

(3) On the appointed date, the applicant must provide the following materials to the Copyright Office:

(i) A copy of the completed application.

(ii) The appropriate examination fee, as required by § 201.3(d) of this chapter.

(iii) A copy of the redacted version of the work(s) that was uploaded to the electronic registration system.

(iv) A signed declaration confirming that the redacted copy specified in paragraph (c)(3)(iii) of this section is identical to the redacted copy that was uploaded to the electronic registration system.

(v) In the case of a secure test, the applicant must provide an unredacted copy of the entire test. In the case of a group of test items prepared for use in a secure test, the applicant must provide an unredacted copy of all the test items. The applicant shall include the following information in the metadata of an unredacted electronic file:

(A) The date of the examination; and

(B) The service request number generated by the electronic registration system.

(4) The Copyright Office will examine the copies specified in paragraphs (c)(3)(iii) and (v) of this section under secure conditions. The Office will retain the signed declaration and the redacted copy that was uploaded to the electronic registration system. If the examination is conducted in-person, the Office will stamp the date of the appointment on the copies and will return them to the applicant when the examination is complete.

(d) *Group registration requirements.* The Copyright Office may register a group of test items if the following conditions have been met:

(1) All the test items must be prepared for use in a secure test, and the name of the secure test must be identified in the title of the group.

(2) The group may contain an unlimited amount of works, but the applicant must identify the individual works included within the group by numbering each test item in the deposit.

(3) The applicant must provide a title for the group as a whole, and must append the term ''GRSTQ'' to the beginning of the title.

(4) The group must contain only unpublished works, or works published within the same three-calendar-month period and the application must identify the earliest date that the works were published.

(5) All the works in the group must have the same author or authors, and the copyright claimant for each work must be the same. Claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application. Each item in the group must be separately copyrightable or must be excluded from the group.

[82 FR 26854, June 12, 2017, as amended at 82 FR 52228, Nov. 13, 2017; 85 FR 27298, May 8, 2020; 86 FR 10177, Feb. 19, 2021]

§§ 202.14–202.15 [Reserved]

§ 202.16 Preregistration of copyrights.

(a) *General.* This section prescribes rules pertaining to the preregistration of copyright claims in works eligible for preregistration under 17 U.S.C. 408(f).

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

(1) A work is in a *class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release* if it falls within one of the following classes of works:

(i) Motion pictures;

(ii) Sound recordings;

(iii) Musical compositions;

(iv) Literary works being prepared for publication in book form;

(v) Computer programs (including videogames); or

(vi) Advertising or marketing photographs.

(2) A work is *being prepared for commercial distribution* if:

(i) The claimant, in a statement certified by the authorized preregistering party, has a reasonable expectation that the work will be commercially distributed to the public; and

(ii) Preparation of the work has commenced and at least some portion of the work has been fixed in a tangible medium of expression, as follows:

(A) For a motion picture, filming of the motion picture must have commenced;

(B) For a sound recording, recording of the sounds must have commenced;

(C) For a musical composition, at least some of the musical composition must have been fixed either in the form of musical notation or in a copy or phonorecord embodying a performance of some or all of the work;

(D) For a literary work being prepared for publication in book form, the actual writing of the text of the work must have commenced;

(E) For a computer program, at least some of the computer code (either source code or object code) must have been fixed; and

(F) For an advertising or marketing photograph, the photograph (or, in the case of a group of photographs intended for simultaneous publication, at least one of the photographs) must have been taken.

(3) A work *eligible for preregistration* is a work that is:

(i) Unpublished;

(ii) Being prepared for commercial distribution; and

(iii) In a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release.

(c) *Preregistration*—(1) *General.* A work eligible for preregistration may be preregistered by submitting an application and fee to the Copyright Office pursuant to the requirements set forth in this section.

(2) *Works excluded.* Works that are not copyrightable subject matter under title 17 of the U.S. Code may not be preregistered in the Copyright Office.

(3) *Application.* An application for preregistration must be submitted electronically on the Copyright Office website at: *http://www.copyright.gov.*

(4) *Unit of publication.* For the purpose of preregistration on one application and upon payment of one filing fee, all copyrightable elements that are otherwise recognizable as self-contained works, that are to be included and first published in the same unit of publication, and in which the copyright claimant is the same, shall be considered one work eligible for preregistration.

(5) *Fee*—(i) *Amount.* The filing fee for preregistration is prescribed in § 201.3(c).

(ii) *Method of payment*—(A) *Copyright Office deposit account.* The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services and for those who file applications electronically. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits in that account. Deposit Account holders can charge preregistration fees against the balance in their accounts instead of using credit cards for each request of service. For information on Deposit Accounts, please download a copy of Circular 5, ''How to Open and Maintain a Deposit Account in the Copyright Office,'' or write the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

(B) *Credit cards, debit cards and electronic funds transfer.* The online preregistration filing system will provide options for payment by means of credit or debit cards and by means of electronic funds transfers. Applicants will be redirected to the Department of Treasury's Pay.gov website to make payments with credit or debit cards, or directly from their bank accounts by means of ACH debit transactions.

(C) *No refunds.* The preregistration filing fee is not refundable.

(6) *Description.* No deposit of the work being preregistered should be submitted with an application for preregistration. The preregistration

applicant should submit a detailed description, of not more than 2,000 characters (approximately 330 words), of the work as part of the application. The description should be based on information available at the time of the application sufficient to reasonably identify the work. Generally, the Copyright Office will not review descriptions for adequacy, but in an action for infringement of a preregistered work, the court may evaluate the adequacy of the description to determine whether the preregistration actually describes the work that is alleged to be infringed, taking into account the information available to the applicant at the time of preregistration and taking into account the legitimate interest of the applicant in protecting confidential information.

(i) For motion pictures, the identifying description should include the following information to the extent known at the time of filing: The subject matter, a summary or outline, the director, the primary actors, the principal location of filming, and any other information that would assist in identifying the particular work being preregistered.

(ii) For sound recordings, the identifying description should include the following information to the extent known at the time of filing: the subject matter of the work or works recorded, the performer or performing group, the genre of the work recorded (e.g., classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz), the titles of the musical compositions being recorded, the principal recording location, the composer(s) of the recorded musical compositions embodied on the sound recording, and any other information that would assist in identifying the particular work being preregistered.

(iii) For musical compositions, the identifying description should include the following information to the extent known at the time of filing: The subject matter of the lyrics, if any; the genre of the work (*e.g.*, classical, pop, musical comedy, soft rock, heavy metal, gospel, rap, hip-hop, blues, jazz); the performer, principal recording location, record label, motion picture, or other information relating to any sound recordings or motion pictures that are being prepared for commercial distribution and will include the musical composition; and any other detail or characteristic that may assist in identifying the particular musical composition.

(iv) For literary works in book form, the identifying description should include to the extent known at the time of filing: The genre of the book (*e.g.*, biography, novel, history, etc.), and should include a brief summary of the work including, the subject matter (*e.g.*, a biography of President Bush, a history of the war in Iraq, a fantasy novel); a description (where applicable) of the plot, primary characters, events, or other key elements of the content of the work; and any other salient characteristics of the book (*e.g.*, whether it is a later edition or revision of a previous work, as well as any other detail which may assist in identifying the literary work in book form).

(v) For computer programs (including videogames), the identifying description should include to the extent known at the time of filing: The nature, purpose and function of the computer program, including the programming language in which it is written and any particular organization or structure in which the program has been created; the form in which it is expected to be published (*e.g.*, as an online-only product; whether there have been previous versions and identification of such previous versions); the identities of persons involved in the creation of the computer program; and, if the work is a videogame, also the subject matter of the videogame and the overall object, goal, or purpose of the game, its characters, if any, and the general setting and surrounding found in the game.

(vi) For advertising or marketing photographs, the description should include the subject matter depicted in the photograph or photographs, including information such as the particular product, event, public figure, or other item or occurrence which the photograph is intended to advertise or market. To the extent possible and applicable, the description for photographs should give additional details which will assist in identifying the particular

photographs, such as the party for whom such advertising photographs are taken; the approximate time periods during which the photographs are taken; the approximate number of photos which may be included in the grouping; any events associated with the photographs; and the location and physical setting or surrounding depicted in the photographs. The description may also explain the general presentation (*e.g.*, the lighting, background scenery, positioning of elements of the subject matter as it is seen in the photographs), and should provide any locations and events, if applicable, associated with the photographs.

(7) *Review of preregistration information.* The Copyright Office will conduct a limited review of applications for preregistration, in order to ascertain whether the application describes a work that is in a class of works that the Register of Copyrights has determined has had a history of infringement prior to authorized commercial release. However, a work will not be preregistered unless an applicant has provided all of the information requested on the application and has certified that all of the information provided on the application is correct to the best of the applicant's knowledge.

(8) *Certification.* The person submitting an application for preregistration must certify on the application that he or she is the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of the work submitted for this preregistration; that the information given in this application is correct to the best of his or her knowledge; that the work is being prepared for commercial distribution; and that he or she has a reasonable expectation that the work will be commercially distributed to the public.

(9) *Effective date of preregistration.* The effective date of a preregistration is the day on which an application and fee for preregistration of a work, which the Copyright Office later notifies the claimant has been preregistered or which a court of competent jurisdiction has concluded was acceptable for preregistration, have been received in the Copyright Office.

(10) *Notification of preregistration.* Upon completion of the preregistration, the Copyright Office will email an official notification of the preregistration to the person who submitted the application.

(11) *Certification of preregistration.* A certified copy of the official notification may be obtained in physical form from the Records Research and Certification Section of the Office of Public Information and Education at the address specified in § 201.1 of this chapter.

(12) *Public record of preregistration.* The preregistration record also will be made available to the public on the Copyright Office website at: *http://www.copyright.gov.*

(13) *Effect of preregistration.* Preregistration of a work offers certain advantages to a copyright owner pursuant to 17 U.S.C. 408(f), 411 and 412. However, preregistration of a work does not constitute prima facie evidence of the validity of the copyright or of the facts stated in the application for preregistration or in the preregistration record. The fact that a work has been preregistered does not create any presumption that the Copyright Office will register the work upon submission of an application for registration.

(14) *Petition for recognition of a new class of works.* At any time an interested party may petition the Register of Copyrights for a determination as to whether a particular class of works has had a history of copyright infringement prior to authorized release that would justify inclusion of that class of works among the classes of works eligible for preregistration.

[70 FR 61906, Oct. 27, 2005, as amended at 71 FR 31092, June 1, 2006; 73 FR 37839, July 2, 2008; 78 FR 42875, July 18, 2013; 82 FR 9360, Feb. 6, 2017; 83 FR 66629, Dec. 27, 2018]

§ 202.17 Renewals.

(a) *General.* (1) This section concerns renewal for copyrights originally secured from January 1, 1964, through December 31, 1977, either by publication with the required copyright notice or by registration as an unpublished work. Renewal registration for these works is optional. As provided in Pub. L. No. 102–307, 106 Stat. 264, enacted June 26, 1992, renewal registration

made during the last year of the original 28–year term of copyright differs in legal effect from renewal registration made during the 67–year extended renewal term. In the latter instance, the copyright is renewed automatically at the expiration of the original 28–year term. In the former instance, renewal by registration during the last year of the original 28–year term vested the renewal copyright in the statutory claimant living on the date of registration.

(2) Works for which copyright was secured before 1964 are governed by the provisions of 17 U.S.C. 304(a) in effect prior to the 1992 date of enactment of Pub. L. No. 102–307. The copyrights in such works could have been renewed by registration only within the last calendar year of the original 28–year term of copyright protection. If renewal registration was not made during that period of time, copyright protection was lost when the original term of copyright expired and cannot be regained.

(3) Works restored to copyright by the Uruguay Round Agreements Act are governed in their copyright term of protection by Pub. L. No. 103–465, 108 Stat. 4809, 4976 (December 8, 1994). Under 17 U.S.C. 104A(a)(1)(A) and (B), as amended, any work in which copyright is restored subsists for the remainder of the term of copyright that the work would have been otherwise granted in the United States. Such term includes the remainder of any applicable renewal term.

(4) Automatic restoration of copyright in certain foreign works that were in the public domain in the United States may have occurred under the Uruguay Round Agreements Act and may be protected by copyright or neighboring rights in their ''source country,'' as defined at 17 U.S.C. 104A(h)(8).

(b) *Definitions.* (1) For purposes of this section, the terms assignee and successor, as they pertain to 17 U.S.C. 304(a)(3)(A)(ii), refer to a party which has acquired the renewal copyright in a work by assignment or by other means of legal succession from the statutory claimant (as that claimant is defined in 17 U.S.C. 304(a)(1)(B) and (C)) in whom the renewal copyright vested but in whose name no renewal registration was previously made.

(2) For purposes of this section, a work has been copyrighted when it has been published with a proper copyright notice or, in the case of an unpublished work, when it has been registered for copyright.

(3) 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.

(4) For purposes of this section, the term statutory claimant means:

(i) A party who was entitled to claim copyright for the renewal term at the time renewal registration was made either as a proprietary claimant, 17 U.S.C. 304(a)(2)(A)(i), or as a personal claimant, 17 U.S.C. 304(a)(2)(B)(i), if registration was made during the original term of copyright; or

(ii) If the original copyright term expired, a party who was entitled to claim copyright for the renewal term as of the last day of the original term of copyright as either a proprietary or a personal claimant, 17 U.S.C. 304(a)(2)(A)(ii) and (a)(2)(B)(ii).

(5) For purposes of this section, the term to vest means to give a fixed, non-contingent right of present or future enjoyment of the renewal copyright in a work. If renewal registration was made during the 28th year of the original term of copyright, the renewal copyright vested in the party or parties entitled to claim such copyright at the time of registration as provided by 17 U.S.C. 304(a)(1)(B) and (C). Although the vested right may have been determined by registration during the 28th year of the original term, the exercise of such right did not commence until the beginning of the renewal term, as provided in 17 U.S.C. 304(a)(2). If renewal registration was not made during the 28th year, the renewal copyright automatically vested upon the beginning of the renewal term in the party or parties entitled to claim such copyright on the last day of the original term as provided by 17 U.S.C. 304(a)(2)(A)(ii) and (B)(ii).

(c) *Time limits: original term and renewal term registration.* (1) Under 17 U.S.C. 304(a), prior to its amendment of June 26, 1992, a registration for the original term of copyright must have been made during the 28 years of that original term, and a renewal registration must also have been made during the 28th year of that term. Pub. L. No. 102–307, 106 Stat. 264 (June 26, 1992) amended section 304(a) for works originally copyrighted from January 1, 1964, through December 31, 1977, and provided for optional original-term registration and optional renewal registration. 17 U.S.C. 304(a)(2), (a)(3) and 409(11). For such works, claims to renewal copyright could have been registered during the last year of the original term but such registration was not required in order to enjoy statutory protection during the renewal term. 17 U.S.C. 304(a)(3)(B).

(2) A renewal registration can be made at any time during the renewal term. 17 U.S.C. 304(a)(3)(A)(ii). If no original-term registration was made, renewal registration remains possible; but the Register may request information, under 17 U.S.C. 409(10), regarding the original term of copyright. Such information must demonstrate that the work complies with all requirements of the 1909 Act with respect to the existence, ownership, or duration of the copyright for the original term of the work. The Form RE/Addendum is used to provide this information.

(3) Renewal registration is currently available for works copyrighted from January 1, 1964, through December 31, 1977. Under the provisions of 17 U.S.C. 304(a)(3)(A)(ii), renewal registration may be made any time during the 67–year renewal term for such works according to the procedure indicated in paragraph (h) of this section. Such renewal registration is optional and is not a condition of the subsistence of the copyright for the 67–year renewal term. 17 U.S.C. 304(a)(3)(B). In the case of such works for which no registration was made during the original term of copyright, renewal registration may be made by submission of a Form RE/Addendum. The Addendum, an adjunct to the renewal form, concerns the facts of first publication for a work and assures the Copyright Office that the work as it existed in its original term of copyright was in compliance with the 1909 copyright law, 17 U.S.C. 1, et. seq. (1909 Act, in effect through December 31, 1977), whose provisions govern such works.

(d) *Benefits of 28th-year renewal registration.* Prior to January 1, 2006, renewal registration was available during the 28th year of the original term of copyright for works copyrighted from January 1, 1964, through December 31, 1977. As provided in Pub. L. No. 102–307, 106 Stat. 264, registration made during the 28th year of the original term of copyright provided the following benefits to the registrant:

(1) The certificate of registration constituted prima facie evidence as to the validity of the copyright during its renewal term and of the facts stated in the certificate. 17 U.S.C. 304(a)(4)(B).

(2) A derivative work prepared under the authority of a grant of a transfer or license of copyright in a work made before the expiration of the original term of copyright could not continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright. 17 U.S.C. 304(a)(4)(A).

(3) The renewal copyright vested upon the beginning of the renewal term in the party entitled to claim the renewal of copyright at the time the application was made as provided under 17 U.S.C. 304(a)(2)(A)(i) and (B)(i).

(e) *Statutory parties entitled to claim copyright for the renewal term under section 304(a).* (1) Renewal claims must be registered in the name of the party or parties entitled to claim copyright for the renewal term as provided in paragraphs (e)(2) through (4) of this section and as specified in 17 U.S.C. 304(a). If a work was a new version of a previously published or registered work, renewal registration may be claimed only in the new matter.

(2) If the renewal claim was submitted during the last, *i.e.*, the 28th, year of the original term of copyright, the claim had to be registered in the name(s) of the statutory claimant(s) entitled to claim the renewal copyright on the date on which the claim was submitted to the Copyright Office. If the renewal claim is submitted during the 67-year extended renewal term, the

renewal claim can be registered only in the name(s) of the statutory claimant(s) entitled to claim the renewal on the last day (December 31) of the original term of copyright. These eligible renewal claimants are listed below:

(i) The person who, on the applicable day, was the copyright proprietor is the appropriate renewal claimant in any posthumous work or any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor;

(ii) The person who, on the applicable day, was the copyright proprietor is the appropriate claimant in 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 was made for hire;

(iii) For any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the appropriate claimants, in descending order of eligibility, are the person who, on the applicable day, was:

(A) The author(s) of the work, if still living;

(B) The widow(er) and/or child(ren) of the author, if the author was deceased on the applicable day;

(C) The author's executor(s), if still acting in that capacity on the applicable day, provided the author had a will and neither the author, nor any widow(er) or child of the author is still living; or

(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.

(3) The provisions of paragraphs (e)(1) and (2) of this section are subject to the following qualification: Notwithstanding the definition of ''posthumous work'' in paragraph (b)(3) of this section, a renewal claim may be registered in the name of the proprietor of a work, as well as in the name of the appropriate claimant under paragraph (e)(2)(iii) of this section, in any case in which 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 either claim.

(4) The provisions of paragraphs (e)(2)(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, removed before the estate has been completely administered, or is deceased at the time of the renewal registration submission, 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 (e) 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 conflicting renewal claims in such a case should not be interpreted as evidencing the validity of either claim.

(f) *Successors/assignees entitled to file an application for the renewal term under Section 304(a).* The provisions of paragraph (e) of this section are subject to the following qualifications:

(1) Where no renewal registration has been made in the name of a person or entity identified in paragraphs (e)(2)(i), (ii) and (iii) of this section, a renewal application may be filed at any time during the renewal term by any successor or assignee of such person or entity.

(2) In such cases described in paragraph (f)(1) of this section, the renewal application must identify the party in whom the renewal copyright vested; must indicate the basis upon which copyright for the renewal term vested in that party; must identify the party

who is the successor or assignee of the statutory claimant under 17 U.S.C. 304(a)(3); and, must give the manner by which such successor/assignee secured the renewal copyright.

(3) When such a claim has been filed by a successor or assignee in the name of the statutory claimant as described in paragraph (e)(2)(i), (ii) and (iii) of this section, generally no subsequent claims may be filed by other successors or assignees whose rights are derived from the same statutory claimant. If a public record of renewal ownership is sought by other successors or assignees of the same statutory claimant, the document of transfer of the renewal copyright, either the renewal in its entirety or in part, may be recorded in the Copyright Office.

(4) Where a successor or assignee claims the renewal right from the same statutory claimant as does another successor or assignee, the Copyright Office may inquire concerning the situation and, if appropriate, may allow adverse renewal claims from the successors/assignees to be placed on the public record. In such cases, correspondence between the parties filing competing renewal claims and the Copyright Office will be, as always, maintained within Office records and subject to public inspection according to regulations found at 37 CFR 201.2.

(g) *Application for renewal registration for a work registered in its original 28-year term.* (1) Each application for renewal registration shall be submitted on Form RE. All forms are available free of charge via the Internet by accessing the Copyright Office website at: *http://www.copyright.gov*. Copies of Form RE are also available free upon request. Requests should be sent in the manner prescribed in § 201.1(b) of this chapter.

(2)(i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (e) of this section or by the duly authorized agent of such claimant, or by the successor or assignee of such claimant as provided under paragraph (f) of this section or by the duly authorized agent of such successor or assignee.

(ii) An application for renewal registration shall be accompanied by the required fee as set forth in 37 CFR 201.3. 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 a successor or assignee, or the duly authorized agent of such claimant or of such successor or assignee (whose identity shall also be given);

(B) The typed, printed, or handwritten signature of such claimant, successor or assignee, or agent, accompanied by the typed or printed name of that person if the signature is handwritten;

(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.

(3) Once a renewal registration has been made, the Copyright Office will not accept another application for renewal registration on behalf of the same renewal claimant.

(h) *Renewal with addendum registration for an unregistered work*—(1) *General.* For published works copyrighted from January 1, 1964, through December 31, 1977, where no registration was made during the original term of copyright and where renewal registration is sought during the 67–year renewal term, the Form RE/Addendum must be used to provide information concerning the original term of copyright. The Form RE/Addendum requires a separate fee and the deposit of one copy or phonorecord of the work as first published (or identifying material in lieu of a copy or phonorecord). The effective date of registration for a renewal claim submitted on a Form RE/Addendum is the date the Copyright Office receives an acceptable completed application, the required fees, and an acceptable deposit for the work.

(2) *Time Limits.* A renewal claim accompanied by an Addendum to Form RE may be filed at any time during the 67–year renewal term.

(3) *Content.* The Form RE/Addendum 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 nation 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, and thereafter until March 1, 1989 (effective date of the Berne Implementation Act of 1988), all the copies or phonorecords of the work, including reprints of the work, published, *i.e.*, publicly distributed in the United States or elsewhere, under the authority of the author or other copyright proprietor, bore the copyright notice required by the Copyright Act of 1909 and that United States copyright subsists in the work;

(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 Form RE/Addendum must also contain information about the country of manufacture and the manufacturing processes; and

(ix) The handwritten signature of the renewal claimant or successor or assignee, or the duly authorized agent of the claimant or of the successor or assignee. The signature shall be accompanied by the printed or typewritten name of the person signing the Addendum and by the date of the signature; and shall be immediately preceded by a declaration that the statements made in the application are correct to the best of that person's knowledge.

(4) *Fees.* Form RE and Form RE/Addendum must be accompanied by the required fee for each form as required in 37 CFR 201.3.

(5) *Deposit requirement.* One copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in 37 CFR 202.20 and 202.21 is required.

(6) *Waiver of the deposit requirement.* Where the renewal applicant asserts that it is either impossible or otherwise an undue hardship to satisfy the deposit requirements of 37 CFR 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 descending order of preference. In every case, however, proof of the copyright notice showing the content and location of the notice as it appeared on copies or phonorecords of the work as first published must be included.

(i) A reproduction of the entire work as first published (e.g., photocopy, videotape, audiotape, CD-ROM, DVD are examples of physical media which may hold reproductions of a work as first published). If the work is a contribution to a periodical, a reproduction of only the contribution (including the relevant copyright notice) will suffice.

(ii) A reprint of the work (e.g., a later edition, a later release of a phonorecord, or the like). The reprint must show the copyright notice as it appeared in the same location within the first published copy of the work as well as the exact content of the copyright notice appearing in the first published edition. If the copyrightable content of the reprint differs from that of the first published edition, an explanation of the differences between the two editions is required.

(iii) Identifying material including a reproduction of the greatest feasible portion of the copyrightable content of a work including a photocopy or photograph of the title page, title screen, record label or the like, as first published, and a photocopy or photograph showing the copyright notice content and location as first published. The Copyright Office may request deposit of additional material if the initial submission is inadequate for examination purposes.

[72 FR 61803, Nov. 1, 2007, as amended at 73 FR 37839, July 2, 2008; 78 FR 42875, July 18, 2013; 82 FR 9360, Feb. 6, 2017; 83 FR 66629, Dec. 27, 2018; 85 FR 19668, Apr. 8, 2020]

§ 202.18 Access to electronic works.

(a) Access to electronic works received under § 202.4(e) and § 202.19, and transferred into the Library of Congress's collections, will be available only to authorized users at Library of Congress premises in accordance with

the policies listed below. Library staff may access such content off-site as part of their assigned duties via a secure connection.

(b) Access to each individual electronic work received under § 202.4(e) and § 202.19 will be limited, at any one time, to two Library of Congress authorized users via a secure server over a secure network that serves Library of Congress premises.

(c) The Library of Congress will not make electronic works received under § 202.4(e) and § 202.19 available to the public over the internet without rightsholders' permissions.

(d) ''Authorized user'' means Library of Congress staff, contractors, and registered researchers, and Members, staff and officers of the U.S. House of Representatives and the U.S. Senate for the purposes of this section.

(e) ''Library of Congress premises'' means all Library of Congress premises in Washington, DC, and the Library of Congress Packard Campus for Audio–Visual Conservation in Culpeper, VA.

(f) Except as provided under special relief agreements entered into pursuant to § 202.19(e) or § 202.20(d), electronic works will be transferred to the Library of Congress for its collections and made available only under the conditions specified by this section.

[83 FR 4147, Jan. 30, 2018, as amended at 85 FR 71837, Nov. 12, 2020]

§ 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. 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.

(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. The ''best edition'' requirement is described in detail at Appendix B to this part.

(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.

(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 Acquisitions and Deposits.

(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 the mandatory deposit requirement under paragraph (c) of this section.

(i) 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).

(ii) In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) 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

(B) 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.

(iii) 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.

(iv) In the case of an electronic work published in the United States and available only online, a copy is ''complete'' if it includes all elements constituting the work in its published form, *i.e.,* the complete work as published, including metadata and formatting codes otherwise exempt from mandatory deposit.

(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.

(4) For purposes of paragraph (c)(5) of this section:

(i) An *electronic-only serial* is a serial as defined in § 202.3(b)(1)(v) that is published in electronic form in the United States and available only online.

(ii) An *electronic-only book* is an electronic literary work published in one volume or a finite number of volumes published in the United States and available only online. This class excludes literary works distributed solely in phonorecords (e.g., audiobooks), serials (as defined in § 202.3(b)(1)(v)), computer programs, websites, blogs, emails, and short online literary works such as social media posts.

(iii) A work shall be deemed to be *available only online* even if copies have been made available to individual consumers or other end users to print on demand, so long as the work is otherwise available only online. A work also shall be deemed to be available only online even if copies have been loaded onto electronic devices, such as tablets or e-readers, in advance of sale to individual consumers, so long as the work is otherwise available only online.

(5) The term *literary monograph* means a literary work published in one volume or a finite number of volumes. This category does not include serials, nor does it include legal publications that are published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.

(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 information 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) Electronic works published in the United States and available only online. This exemption includes electronic-only books and electronic serials available only online only until such time as a demand is issued by the Copyright Office under the regulations set forth in § 202.24. This exemption

does not apply to works that are published in both online, electronic formats and in physical formats, which remain subject to the appropriate mandatory deposit requirements.

(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 representations 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 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, 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 solely in copies, or in both copies and phonorecords, 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 (diazo or ozalid process). If photographs are submitted, they should be 8×10 inches and should clearly show several exterior and interior views. The deposit should disclose the name(s) of the architect(s) and draftsperson(s) and the building site.

(ix) In the case of published literary monographs, 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, unless the Copyright Office issues a demand for a second copy pursuant to 17 U.S.C. 407(d).

(x) In the case of published newspapers, a deposit submitted pursuant to and in compliance with the group registration option under § 202.4(e) shall be deemed to satisfy the mandatory deposit obligation under this section.

(xi) In the case of serials (as defined in § 202.3(b)(1)(v), but excluding newspapers) published in the United States in a physical format, or in both a physical and an electronic format, the copyright owner or the owner of the exclusive right of publication must provide the Library of Congress with two complimentary subscriptions to the serial, unless Acquisitions and Deposits informs the owner that the serial is not needed for the Library's collections. Subscription copies must be physically mailed to the Copyright Office, at the address for mandatory deposit copies specified in § 201.1(c) of this chapter, promptly after the publication of each issue, and the subscription(s) must be maintained on an ongoing basis. The owner may cancel the subscription(s) if the serial is no longer published by the owner, if the serial is no longer published in the United States in a physical format, or if Acquisitions and Deposits informs the owner that the serial is no longer needed for the Library's collections. In addition, prior to commencing the subscriptions, the

owner must send a letter to Acquisitions and Deposits at the address specified in §201.1(b) of this chapter confirming that the owner will provide the requested number of subscriptions for the Library of Congress. The letter must include the name of the publisher, the title of the serial, the International Standard Serial Number (''ISSN'') that has been assigned to the serial (if any), and the issue date and the numerical or chronological designations that appear on the first issue that will be provided under the subscriptions.

(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.

(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 Associate Register of Copyrights and Director of the Office of Registration Policy and Practice, 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. 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.

(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; 64 FR 62978, Nov. 18, 1999; 66 FR 34373, June 28, 2001; 73 FR 37839, July 2, 2008; 75 FR 3869, Jan. 25, 2010; 82 FR 9360, Feb. 6, 2017; 83 FR 2372, Jan. 17, 2018; 83 FR 4147, Jan. 30, 2018; 83 FR 25375, June 1, 2018; 83 FR 61550, Nov. 30, 2018; 85 FR 71837, Nov. 12, 2020; 86 FR 32642, June 22, 2021]

§ 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. 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.

(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). For purposes of this section, if a work is first published in both hard copy, *i.e.*, in a physically tangible format, and also in an electronic format, the current Library of Congress Best Edition Statement requirements pertaining to the hard copy format apply.

(2) A *complete* copy or phonorecord means the following:

(i) *Unpublished works.* Subject to the requirements of paragraph (b)(2)(vii) 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)(iv) through (vii) 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) *Works submitted for registration in digital formats.* A ''complete'' electronically filed work is one which is embodied in a digital file which contains:

(A) If the work is unpublished, all authorship elements for which registration is sought; and

(B) If the work is published solely in an electronic format, all elements constituting the work in its published form, *i.e.*, the complete work as published, including metadata and authorship for which registration is not sought. Publication in an electronic only format requires submission of the digital file(s) in exact first-publication form and content.

(C) For works submitted electronically, any of the following file formats are acceptable for registration: PDF, TXT, WPD, DOC, TIF, SVG, JPG, XML, HTML, WAV, and MPEG family of formats, including MP3. This list of file formats is non-exhaustive and it may change, or be added to periodically. Changes will be noted in the list of acceptable formats on the Copyright Office website.

(D) Contact with the registration applicant may be necessary if the Copyright Office cannot access, view, or examine the content of any particular digital file that has been submitted for the registration of a work. For purposes of 17 U.S.C. 410(d), a deposit has

not been received in the Copyright Office until a copy that can be reviewed by the Office is received.

(iv) *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.

(v) *Sound recordings.* In the case of published sound recordings, a ''complete'' phonorecord has the meaning set forth in § 202.19(b)(2)(i).

(vi) *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.

(vii) *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 *secure test* and *literary monograph* have the meanings set forth in §§ 202.13(b) and 202.19(b)(5).

(4) For the purposes of determining the applicable deposit requirements under this section only, the following shall be considered 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 solely in copies or in both copies and

phonorecords, provided that one complete copy (rather than a phonorecord) is deposited.

(F) Published multimedia kits or any part thereof.

(G) Works exempted from the requirement of depositing identifying material under paragraph (c)(2)(xi)(B) 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.

(K) Works reproduced on three-dimensional containers such as boxes, cases, and cartons.

(L) Published literary monographs.

(M) Architectural works, for which the deposit must comply with the requirements set forth in § 202.11.

(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 Registration Program of the Copyright Office, the description accompanying the deposit must comply with § 202.21(h). 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 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 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 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 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 , 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 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 applicant may submit identifying material in lieu of one complete copy if the conditions set forth in § 202.13(c) have been met.

(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, the 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 3 × 3 inches and no larger than 9 × 12 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 3 × 3 inches and no larger than 9 × 12 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 paragraph (c)(2)(vii)(D) of this section, 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) of this section.

(*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 or in the case of applications for automated databases that predominantly consist of photographs, the claimant shall deposit identifying portions that comply with (D)(8) of this section; the claimant shall, also deposit a brief typed or printed descriptive statement containing the notice of copyright information required under paragraphs (c)(2)(vii)(D)(6) or (7) of this section, 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.

(*8*) In the case of an application for registration of a database that consists predominantly of photographs (including a group registration for revised or updated versions of such a database), ''identifying portions'' shall instead consist of all individual photographs included in the claim. Photographs must be submitted in digital form in one of the following formats: JPEG, GIF, or TIFF. In addition, the applicant must submit a sequentially numbered list containing the title and file name—and if the photographs have been published, the month and year of publication—for each photograph in the group. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office. The file name for the list must contain the title of the database, and the case number assigned to the application by the electronic registration system, if any (e.g., ''Title Of Database Case Number 162883927239.xls''). The photographs and the numbered list may be uploaded to the electronic registration system with the permission and under the direction of the Visual Arts Division, preferably in a .zip file containing these materials. The file size for each uploaded file must not exceed 500 megabytes; the photographs may be compressed to comply with this requirement. Alternatively, the photographs and the numbered list may be saved on a physical storage device, such as a flash drive, CD–R, or DVD–R, and delivered to the Copyright Office together with the required shipping slip generated by the electronic registration system or with a paper application submitted on Form VA.

(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 specified 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.

(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 a phonorecord.

(D) For sound recordings, the deposit shall consist of a reproduction of the entire work on a 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 instead of a copy. If the sheet-like 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 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 this chapter 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*) of this section, 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 $12 \times 24 \times 6$ 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 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 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 phonorecord or phonorecords submitted for registration of a claim to copyright is inaudible on audio playback devices in the Registration Program of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section.

(xvii)–(xviii) [Reserved]

(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 Registration Program 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 or;

(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 §202.4; or

(iv) Permit the deposit of identifying material which does not comply with §202.4 or §202.21.

(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). Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice, 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 termination 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 17 U.S.C. 407 and §202.19 may be used to satisfy the deposit provisions of this section if 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.

[51 FR 6405, Feb. 24, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §202.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 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 §§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 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 §202.19(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 3×3 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 3×3 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 3×3 inches and not more than 9×12 inches, but preferably 8×10 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 3×3 inches and no larger than 9×12 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 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 a 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 Registration Program of the Copyright Office, the ''description'' required by § 202.20(c)(2)(ii) 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, as amended at 73 FR 37839, July 2, 2008; 82 FR 9362, Feb. 6, 2017]

§ 202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.

(a) *General.* This section prescribes rules pertaining to the acquisition of phonorecords and copies of unpublished audio and audiovisual transmission programs by the Library of Congress under section 407(e) of title 17 of the United States Code, as amended. It also prescribes rules pertaining to the use of such phonorecords and copies in the registration of claims to copyright, under section 408(b).

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

(1) The terms copies, fixed, phonorecords, 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. For the purpose of this section, the term transmission includes transmission via the Internet, cable, broadcasting, and satellite systems, and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent.

(2) *Title 17* means title 17 of the United States Code, as amended.

(c) *Recording of transmission programs.* (1) Library of Congress employees, including Library of Congress contractors, acting under the general authority of the Librarian of Congress, may make a fixation of an unpublished audio or audiovisual transmission program directly from a transmission to the public in the United States, in accordance with subsections 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's acquisition policies in effect at the time of fixation. Specific notice of an intent to record a transmission program will ordinarily not be given. In general, the Library of Congress will seek to record a substantial portion of the television programming transmitted by noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will record selected programming transmitted by commercial television broadcast stations, both network and independent. The Library will also record a selected portion of the radio programming transmitted by commercial and noncommercial broadcast stations. Additionally, the Library will record a selected portion of unpublished Internet, cable and satellite programming transmitted to the public in the United States.

(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 recorded by the Library.

(3) The Library of Congress will not knowingly record any unfixed or published transmission program under the recording 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 radio program transmitted to the public in the United States has been fixed but not published at the time of transmission, and 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 recording 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; 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 copy or phonorecord 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 or phonorecord to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code.

(8) The Library of Congress shall maintain a list of the radio, cable, Internet and satellite transmission programs that the Library has recorded on the Motion Picture, Broadcasting and Recorded Sound Division

website at *http://www.loc.gov/rr/record/* for audio transmission programs, or *http://www.loc.gov/rr/mopic/* for audiovisual transmission programs, and, in making fixations of such unpublished transmission programs, shall identify a program that the Library has recorded by including that transmission program on the list no later than fourteen days after such fixation has occurred. The Library of Congress in making fixations of unpublished television 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 television network stations, the notification will be sent to the particular network. In the case of any other commercial television 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 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 or phonorecord 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 or phonorecord to the Library, lending a copy or phonorecord to the Library for reproduction, or selling a copy or phonorecord to the Library at a price not to exceed the cost of reproducing and supplying the copy or phonorecord;

(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 use of the copies or phonorecords;

(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, if the recipient takes the position that the work is published; and

(vi) A statement that a *compliance copy*, or in the case of an audio transmission program, a compliance phonorecord, 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 or phonorecord 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 or phonorecord. 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 and phonorecords 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 Acquisitions and Deposits, 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 should be granted.

(e) *Disposition and use of copies and phonorecords.* (1) All copies and phonorecords 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 or phonorecord 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 and phonorecords acquired or made under this section, except copies and phonorecords of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the following restrictions concerning copying and access: in the case of television or other audiovisual transmission programs, copying and access are governed by 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; in the case of audio transmission programs, copying and access are governed by Library of Congress Regulation 818–18.1, Recorded Sound Listening and Duplication Services, or its successors. 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,'' 2 U.S.C. 170, and such regulations as the Librarian of Congress shall prescribe.

(f) *Registration of claims to copyright.* (1) Copies and phonorecords 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 no 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 or phonorecord so fixed be used to satisfy the registration deposit provisions.

(2) Copies and phonorecords 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 or phonorecord lent, transferred, or sold, and there is an explanation that the copy or phonorecord 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 or phonorecords of unpublished audio or audiovisual transmission programs on terms different from those contained in this section is authorized.

(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; 64 FR 36575, July 7, 1999; 66 FR 34373, June 28, 2001; 69 FR 62411, Oct. 26, 2004; 82 FR 9362, Feb. 6, 2017; 86 FR 32642, June 22, 2021]

§ 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) 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* or its plural 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 Director of the Office of Copyright Records in the manner prescribed specified in § 201.1(b)(1) of this chapter, and shall include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of or on behalf of the depositor or copyright owner of record, and 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) of this section 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 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 or after September 19, 1978, shall satisfy the requirements of §§ 202.20 and 202.21.

(e) *Fee for full term retention.* (1) Pursuant to section 708(a) 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) of this chapter, for each copyright deposit granted full term retention.

(2) A check or money order in the amount prescribed in § 201.3(d) of this chapter payable to the U.S. Copyright Office, 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 request 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; 64 FR 36575, July 7, 1999; 65 FR 39819, June 28, 2000; 73 FR 37839, July 2, 2008; 82 FR 9362, Feb. 6, 2017; 85 FR 19668, Apr. 8, 2020; 86 FR 32642, June 22, 2021]

§ 202.24 Deposit of published electronic works available only online.

(a) Pursuant to authority under 17 U.S.C. 407(d), the Register of Copyrights may make written demand to deposit one complete copy or a phonorecord of an electronic work published in the United States and available only online upon the owner of copyright or of the exclusive right of publication in the work, under the following conditions:

(1) Demands may be made only for works in those categories identified in §202.19(c)(5) as being subject to demand.

(2) Demands may be made only for electronic-only serials published on or after February 24, 2010.

(3) Demands may be made only for electronic-only books published on or after December 14, 2020.

(4) The owner of copyright or of the exclusive right of publication must deposit the demanded work within three months of the date the demand notice is received.

(5) Copies or phonorecords deposited in response to a demand must be able to be accessed and reviewed by the Copyright Office, Library of Congress, and the Library's authorized users on an ongoing basis.

(b) *Technical standards.* Technical standards for the transmission of copies of electronic-only works to the Copyright Office in response to a demand will be available on the Copyright Office website (*www.copyright.gov*).

(c) *Definitions.* (1) ''Best edition'' has the meaning set forth in §202.19(b)(1).

(2) ''Complete copy'' has the meaning set forth in §202.19(b)(2).

(3) ''Electronic-only'' works are electronic works that are published and available only online.

(d) *Special relief.* (1) In the case of any demand made under paragraph (a) 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 17 U.S.C. 407(d);

(ii) Permit the deposit of incomplete copies or phonorecords; or

(iii) Permit the deposit of copies or phonorecords other than those normally comprising the best edition.

(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 section shall be made in writing to Acquisitions and Deposits, 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.

[75 FR 3869, Jan. 25, 2010, as amended at 82 FR 9362, Feb. 6, 2017; 85 FR 71837, Nov. 12, 2020; 86 FR 32642, June 22, 2021]

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

a. 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 work as first published.)

b. 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.

c. 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.

d. 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.

e. 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 × 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, by special arrangement.
2. 70 mm positive print, if original production negative is greater than 35 mm.
3. 35 mm positive prints.
4. 16 mm positive prints.
B. Video Formats:
1. Betacam SP.
2. Digital Beta (Digibeta).
3. DVD.
4. 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 cassetes.
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. Electronic-Only Works Published in the United States and Available Only Online

The following encodings are listed in descending order of preference for all deposits in all categories below:
1. UTF–8.
2. UTF–16 (with BOM).
3. US–ASCII.
4. ISO 8859.
5. All other character encodings.
A. Electronic-Only Serials:
1. Content Format:
a. Serials-specific structured/markup format:
i. Content compliant with the NLM Journal Archiving (XML) Document Type Definition (DTD), with presentation stylesheet(s), rather than without NISO JATS: Journal Article Tag Suite (NISO Z39.96–201x) with XSD/XSL presentation stylesheet(s) and explicitly stated character encoding.
ii. Other widely used serials or journal XML DTDs/schemas, with presentation stylesheet(s), rather than without.
iii. Proprietary XML format for serials or journals (with documentation), with DTD/schema and presentation stylesheet(s), rather than without.
b. Page-oriented rendition:
i. PDF/UA (Portable Document Format/Universal Accessibility; compliant with ISO 14289–1).
ii. PDF/A (Portable Document Format/Archival; compliant with ISO 19005).
iii. PDF (Portable Document Format, with searchable text, rather than without; highest quality available, with features such as searchable text, embedded fonts, lossless compression, high resolution images, device-independent specification of colorspace; content tagging; includes document formats such as PDF/X).
c. Other structured or markup formats:
i. Widely-used serials or journal non-proprietary XML-based DTDs/schemas with presentation stylesheet(s).
ii. Proprietary XML-based format for serials or journals (with documentation) with DTD/schema and presentation stylesheet(s).
iii. XHTML or HTML, with DOCTYPE declaration and presentation stylesheet(s).
iv. XML-based document formats (widely used and publicly documented). With presentation stylesheets, if applicable. Includes ODF (ISO/IEC 26300) and OOXML (ISO/IEC 29500).
d. PDF (web-optimized with searchable text).
e. Other formats:
i. Rich text format.
ii. Plain text.
iii. Widely-used proprietary word processing or page-layout formats.
iv. Other text formats not listed here.
2. Metadata Elements: If included with published version of work, descriptive data (metadata) as described below should accompany the deposited material:
a. Title level metadata: serial or journal title, ISSN, publisher, frequency, place of publication.
b. Article level metadata, as relevant/or applicable: volume(s), number(s), issue dates(s), article title(s), article author(s), article identifier (DOI, etc.).
c. With other descriptive metadata (e.g., subject heading(s), descriptor(s), abstract(s)), rather than without.

3. Completeness:

a. All elements considered integral to the publication and offered for sale or distribution must be deposited—e.g., articles, table(s) of contents, front matter, back matter, etc. Includes all associated external files and fonts considered integral to or necessary to view the work as published.

b. All updates, supplements, releases, and supersessions published as part of the work and offered for sale or distribution must be deposited and received in a regular and timely manner for proper maintenance of the deposit.

4. Technological measures that control access to or use of the work should be removed.

B. Electronic-Only Books:

1. Content Format:

a. Book-specific structured/markup format, *i.e.*, XML-based markup formats, with included or accessible DTD/schema, XSD/XSL presentation stylesheet(s), and explicitly stated character encoding:

i. BITS-compliant (NLM Book DTD).

ii. EPUB-compliant.

iii. Other widely-used book DTD/schemas (e.g., TEI, DocBook, etc.).

b. Page-oriented rendition:

i. PDF/UA (Portable Document Format/Universal Accessibility; compliant with ISO 14289–1).

ii. PDF/A (Portable Document Format/Archival; compliant with ISO 19005).

ii. PDF (Portable Document Format; highest quality available, with features such as searchable text, embedded fonts, lossless compression, high resolution images, device-independent specification of colorspace; content tagging; includes document formats such as PDF/X).

c. Other structured markup formats:

i. XHTML or HTML, with DOCTYPE declaration and presentation stylesheet(s).

ii. XML-based document formats (widely-used and publicly-documented), with presentation style sheet(s) if applicable. Includes ODF (ISO/IEC 26300) and OOXML (ISO/IEC 29500).

iii. SGML, with included or accessible DTD.

iv. Other XML-based non-proprietary formats, with presentation stylesheet(s).

v. XML-based formats that use proprietary DTDs or schemas, with presentation stylesheet(s).

d. PDF (web-optimized with searchable text).

e. Other formats:

i. Rich text format.

ii. Plain text.

iii. Widely-used proprietary word processing formats.

iv. Other text formats not listed here.

2. Metadata Elements: If included with published version of work, descriptive data (metadata) as described below should accompany the deposited material:

a. As supported by format (e.g., standards-based formats such as ONIX, XMP, MODS, or MARCXML either embedded in or accompanying the digital item): title, creator, creation date, place of publication, publisher/producer/distributor, ISBN, contact information.

b. Include if part of published version of work: language of work, other relevant identifiers (e.g., DOI, LCCN, etc.), edition, subject descriptors, abstracts.

3. Rarity and Special Features:

a. Limited editions (including those with special features such as high resolution images.)

b. Editions with the greatest number of unique features (such as additional content, multimedia, interactive elements.)

4. Completeness:

a. For items published in a finite number of separate components, all elements published as part of the work and offered for sale or distribution must be deposited. Includes all associated external files and fonts considered integral to or necessary to view the work as published.

b. All updates, supplements, releases, and supersessions published as part of the work and offered for sale or distribution must be submitted and received in a regular and timely manner for proper maintenance of the deposit.

5. Technological Protection Measures:

a. Copies published in formats that do not contain technological measures controlling access to or use of the work.

b. Copies published with technological measures that control access to or use of the work, and for which the owner has elected to remove such technological measures.

c. Copies otherwise provided in a manner that meets the requirements of §202.24(a)(5).

X. 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; 69 FR 8822, Feb. 26, 2004; 75 FR 3869, Jan. 25, 2010; 82 FR 9362, Feb. 6, 2017; 83 FR 61550, Nov. 30, 2018; 85 FR 71837, Nov. 12, 2020]

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

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203.11 Fees.

AUTHORITY: 5 U.S.C. 552.

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 the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The rules contained in this part should be read in conjunction with the text of FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines''). Requests made by individuals for records pertaining to themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under part 204 of this chapter. Requests for services for which the Copyright Act of 1976, title 17 of the United States Code, requires a fee are not processed under this part, but will be processed under the applicable regulations governing that service (including § 201.2 of this chapter). If the Copyright Office receives a request for services for which the Copyright Act requires a fee to be charged, the Office will notify the requester of the procedure established to obtain such services, and the applicable fees under § 201.3 of this chapter. Section 706(b) of the Copyright Act and the regulations issued under section 706(b) are not subject to FOIA. All information relating to proceedings of the Copyright Claims Board under chapter 15 of the Copyright Act is exempt from disclosure under FOIA, except for Copyright Claims Board determinations published on the Copyright Office website and related records and information published on that website.

[82 FR 9506, Feb. 7, 2017, as amended at 86 FR 46122, Aug. 18, 2021]

§ 203.2 Authority and functions.

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.

[82 FR 9362, Feb. 6, 2017]

§ 203.3 Organization.

(a) The Office of the Register of Copyrights has overall responsibility for the Copyright Office and its statutory mandate, specifically: For legal interpretation of the copyright law; administering the provisions of title 17 of the U.S.C.; promulgating copyright regulations; advising Congress and other government officials on domestic and international copyright policy and other intellectual property issues; determining personnel and other resource requirements for the Office; organizing strategic and annual program planning; and preparing budget estimates for inclusion in the budget of the Library of Congress and U.S. Government.

(b) The Office of the Director of Operations is headed by the Assistant Register and Director of Operations (''ARDO''), who advises the Register on core business functions and coordinates and directs the day-to-day operations of the Copyright Office. This Office supervises human capital, finances, the administration of certain statutory licenses, mandatory acquisitions and deposits, product management, and materials control and analysis functions. It interacts with other senior management offices that report to the Register and frequently coordinates and

assesses institutional projects. This Office has five divisions: Acquisitions and Deposits; Administrative Services; Financial Management; Materials Control and Analysis; and Product Management.

(1) Acquisitions and Deposits (''A&D'') administers the mandatory deposit requirements of the Copyright Act, acting as an intermediary between copyright owners of certain published works and the acquisitions staff in the Library of Congress (17 U.S.C. 407). It creates and updates records for copies received by the Copyright Office, demands particular works or particular formats of works as necessary, and administers deposit agreements between the Library and copyright owners.

(2) The Administrative Services Division (''ASD'') manages human capital and physical space issues for the Copyright Office, and serves as the liaison with other components of the Library for those matters.

(3) The Financial Management Division (''FMD'') oversees fiscal, financial, and budgetary activities for the Copyright Office. It contains the Licensing Section, which administers certain statutory licenses set forth in the Copyright Act. The Licensing Section collects royalty payments and examines statements of account for the cable statutory license (17 U.S.C. 111), the satellite statutory license for retransmission of distant television broadcast stations (17 U.S.C. 119), and the statutory license for digital audio recording technology (17 U.S.C. chapter 10). The Licensing Section also accepts and records certain documents associated with the use of the mechanical statutory license for making and distributing phonorecords of nondramatic musical works (17 U.S.C. 115) and the statutory licenses for publicly performing sound recordings by means of digital audio transmission (17 U.S.C. 112, 114).

(4) The Materials Control and Analysis Division (''MCA'') processes incoming mail, creates initial records, and dispatches electronic and hardcopy materials and deposits to the appropriate service areas. It operates the Copyright Office's central print room and outgoing mail functions.

(5) The Product Management Division (''PMD'') advises on business process integration and improvements in connection with technology initiatives affecting the Copyright Office. It coordinates business activities, including resource planning, stakeholder engagement activities, and project management. The PMD oversees the Office's data management, performance statistics, and business intelligence capabilities.

(c) The Office of the General Counsel is headed by the General Counsel and Associate Register of Copyrights, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register in carrying out critical work of the Copyright Office regarding the legal interpretation of the copyright law. The General Counsel liaises with the Department of Justice, other federal departments, and the legal community on a wide range of copyright matters including litigation and the administration of title 17 of the U.S.C. The General Counsel has primary responsibility for the formulation and promulgation of regulations and the adoption of legal positions governing policy matters and the practices of the Copyright Office. The Office of the General Counsel also supervises the Copyright Claims Board (''CCB'') as it discharges its statutory mandate.

(1) The CCB is a voluntary, alternative forum to Federal court for parties to seek resolution of copyright disputes that have a low economic value. The CCB is headed by three Copyright Claims Officers who ensure that claims are properly asserted and appropriate for resolution; manage proceedings; render determinations and award monetary relief; provide public information; certify and maintain CCB records, including making proceeding records publicly available; and other related duties.

(2) [Reserved]

(d) The Office of Policy and International Affairs is headed by the Associate Register of Copyrights and Director of Policy and International Affairs, who is an expert copyright attorney and one of four legal advisors to the Register. This Office assists the Register with critical policy functions of

the Copyright Office, including domestic and international policy analyses, legislative support, and trade negotiations. Policy and International Affairs represents the Copyright Office at meetings of government officials concerned with the international aspects of intellectual property protection, and provides regular support to Congress and its committees on statutory amendments and construction.

(e) The Office of Registration Policy and Practice is headed by the Associate Register of Copyrights and Director of Registration Policy and Practice, who is an expert copyright attorney and one of four legal advisors to the Register. This Office administers the U.S. copyright registration system and advises the Register of Copyrights on questions of registration policy and related regulations and interpretations of copyright law. This Office has three divisions: Literary, Performing Arts, and Visual Arts. It also has a number of specialized sections, for example, in the area of motion pictures. This Office executes major sections of the *Compendium of Copyright Office Practices*, particularly with respect to the examination of claims and related principles of law.

(f) The Office of Public Information and Education is headed by the Associate Register for Public Information and Education, who is an expert copyright attorney and one of four legal advisors to the Register. This Office informs and helps carry out the work of the Register and the Copyright Office in providing authoritative information about the copyright law to the public and establishing educational programs. The Office publishes the copyright law and other provisions of title 17 of the U.S.C.; maintains a robust and accurate public website; creates and distributes a variety of circulars, information sheets, and newsletters, including NewsNet; responds to public inquiries regarding provisions of the law, explaining registration policies, procedures, and other copyright-related topics upon request; plans and executes a variety of educational activities; and engages in outreach with various copyright community stakeholders. This Office is comprised of two sections: The Public Information Office and the Outreach and Education section.

(g) The Office of Copyright Records is headed by the Director, who is an expert in public administration and one of the Register's top business advisors. This Office is responsible for carrying out major provisions of title 17 of the U.S.C., including establishing records policies; ensuring the storage and security of copyright deposits, both analog and digital; recording licenses and transfers of copyright ownership; preserving, maintaining, and servicing copyright related records; researching and providing certified and non-certified reproductions of copyright deposits; and maintaining the official records of the Copyright Office. It contains three divisions: Recordation; Records Management; and Records, Research and Certification. Additionally, the Office engages regularly in discussions with leaders in the private and public sectors regarding issues of metadata, interoperability, data management, and open government.

(h)–(i) [Reserved□

(j) The Office has no field organization.

(k) The Office is located in The James Madison Memorial Building of the Library of Congress, 1st and Independence Avenue SE., Washington, DC. 20559–6000. 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.

(l) 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.

[60 FR 34168, June 30, 1995, as amended at 62 FR 55742, Oct. 28, 1997; 64 FR 36575, July 7, 1999; 65 FR 39819, June 28, 2000; 66 FR 34373, June 28, 2001; 73 FR 37839, July 2, 2008; 76 FR 27898, May 13, 2011; 82 FR 9362, Feb. 6, 2017; 82 FR 9507, Feb. 7, 2017; 83 FR 63064, Dec. 7, 2018; 86 FR 32642, June 22, 2021]

PROCEDURES

§ 203.4 Proactive disclosure of Office records.

Records that are required by FOIA to be made available for public inspection in electronic format may be accessed through the Office's Web site at *www.copyright.gov*. The Office is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Office must ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. The Office has a FOIA Public Liaison who can assist individuals in locating records particular to the Office. The Office's FOIA Public Liaison contact information may be found at *www.copyright.gov/foia*.

[82 FR 9507, Feb. 7, 2017]

§ 203.5 Requirements for making requests.

(a) *General information*. To be proper, a request must be made in accordance with the rules established under this part.

(1) To make a request for records, a requester should write directly by email to *copfoia@loc.gov*, by postal mail to the FOIA Requester Service Center, Copyright Office, PIE, P.O. Box 70400, Washington, DC 20024, or submit the request 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, 101 Independence Avenue SE., Washington, DC. If a request is made by mail, both the request and the envelope containing it should include ''Freedom of Information Act Request''. A request will receive the quickest possible response if it is clearly marked and addressed to the FOIA Requester Service Center. Guidelines for submitting a request can be found at *www.copyright.gov/foia*.

(2) A requester who is making a request for records about himself or herself must comply with part 204 of this chapter.

(3) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requestor, or by submitting proof that the individual is deceased (*e.g.*, a copy of a death certificate or obituary). As an exercise of administrative discretion, the Office can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought*. The request must reasonably describe the records sought. A request reasonably describes records if it enables the Office to identify the records requested in such a way that is not unreasonably burdensome or disruptive to Office operations. To the extent possible, requesters should include specific information that may help the agency identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, registration, recordation, or reference number. Before submitting their requests, requesters may contact the FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If after receiving a request the Office determines that it does not reasonably describe the records sought, the Office will inform the requester what additional information is needed or why the request is insufficient. The requester may discuss with the FOIA Public Liaison how to reformulate or modify a request. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) *Formats*. Requests may specify the preferred form or format (including electronic formats) for the records identified. The Office will accommodate the request if the record is readily reproducible in that form or format.

(d) *Contact information*. Requesters must provide contact information, such as a phone number, email address, and/or mailing address, to assist the Office in communicating with a requester and providing released records.

[82 FR 9507, Feb. 7, 2017]

§ 203.6 Responsibility for responding to requests.

(a) *In general.* The Office is responsible for responding to a request. In determining which records are responsive to a request, the Office ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the Office will inform the requester of that date.

(b) *Authority to grant or deny requests.* The Register of Copyrights, and the Associate Register of Copyrights and Director of Public Information and Education are authorized to grant or to deny any requests for records.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Office in response to a request, the Office will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, the Office will proceed in one of the following ways:

(1) *Consultation.* When records originated with the Office, but contain within them information of interest to another agency or Federal Government office, the Office may consult with the other entity prior to making a release determination.

(2) *Referral.* (i) When the Office believes that a different agency is best able to determine whether to disclose the record, the Office will refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the Office that originated the record is presumed to be the best agency to make the disclosure determination. If, however, the Office and the originating agency jointly agree that the Office is in the best position to respond, then the record may be handled as a consultation.

(ii) Whenever the Office refers any responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral. The notification will include the name(s) of the agency to which the record was referred and that agency's FOIA contact information.

(3) *Coordination.* When the Office believes that a different agency is best able to determine whether to disclose the record, but disclosure of the identity of the different agency could harm an interest protected by an applicable exemption, the Office will coordinate with the originating agency to seek its views of disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Office.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Office will be handled according to the date that the first agency received the perfected FOIA request.

(e) *Agreements regarding consultations and referrals.* The Office may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

[82 FR 9507, Feb. 7, 2017]

§ 203.7 Timing of responses to requests.

(a) *In general.* The Office will respond to all properly addressed emailed and mailed requests and all personally delivered written requests for records within 20 working days of receipt. The Office ordinarily will respond to requests according to their order of receipt. In instances involving a misdirected request rerouted to the Office, the response time will commence on the date that the request is received by the Office, but in any event not later than 10 working days after the request is first received by the Library of Congress.

(b) *Multitrack processing.* The Office will designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. The Office may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Office may consider are the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. The Office will advise a requester of the track into which their

request falls and, when appropriate, will offer the requester an opportunity to narrow or modify their request so that it can be placed in a different processing track.(1)(i) Whenever the Office cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in paragraph (c)(2) of this section, the Office will notify the requester in writing of the unusual circumstances and the estimated date of determination, and alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services. Where an extension of time greater than 10 days is required, the Office will give the requester the opportunity to:

(A) Limit the scope of the request so that it may be processed within 20 working days; or

(B) Arrange with the Office an alternative time frame for processing the request or a modified request.

(ii) The Office will make available the FOIA Public Liaison to assist the requester in modifying the request.

(2) As used in this paragraph (c), ''unusual circumstances'' means, only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from establishments that are physically separate from the Office;

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or,

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Copyright Office which have a substantial subject matter interest therein.

(d) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, the Office may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Office will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) The Office will process requests and appeals on an expedited basis whenever it is determined that the request or appeal involves:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or,

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request or appeal is made by a person who is primarily engaged in disseminating information.

(2) A request for expedited processing may be made at any time. Requests for expedited processing of initial requests should be made to the FOIA Requester Service Center. Requests for expedited processing of an administrative appeal should be submitted to the Office of the Register of Copyrights.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, setting forth the basis for the claim that a ''compelling need'' exists for the requested information.

(4) The Office will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority and processed as soon as is practicable. If a request for expedited processing is denied, the requester may submit an appeal to the Office of the Register of Copyrights. The Office will act expeditiously on any appeal of a denial of expedited processing.

[82 FR 9508, Feb. 7, 2017, as amended at 84 FR 3700, Feb. 13, 2019]

§ 203.8 Responses to requests.

(a) *In general.* The Office, to the extent practicable, will communicate with requesters having access to the Internet electronically, such as email or web portal.

(b) *Acknowledgement of requests.* The Office will acknowledge a request in writing and assign it an individualized tracking number if it will take longer

than 10 working days to process. The Office will include in the acknowledgement a brief description of the records sought.

(c) *Estimated dates of completion and interim responses.* Upon request, the Office will provide an estimated date by which the Office expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the agency may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Office determines it will grant a request in full or in part, it will notify the requester in writing. The Office will also inform the requester of any fees charged under § 203.11 and will disclose the requested records to the requester promptly upon payment of any applicable fees. The Office will inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(e) *Adverse determinations.* If the Office makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Content of denial.* The denial shall be signed by the Associate Register of Copyrights and Director of Public Information and Education or a designee and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the agency in denying the request;

(3) When applicable, an estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that the denial may be appealed under § 203.9, and a description of the appeal requirements; and,

(5) A statement notifying the requester of the assistance available from the Office's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(g) *Markings on released documents.* Records disclosed in part shall be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

[82 FR 9508, Feb. 7, 2017]

§ 203.9 Administrative appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determination to the Register of Copyrights. Examples of adverse determinations are provided in § 203.8(e). Requesters can submit appeals by mail to the Register of Copyrights, Copyright Office, P.O. Box 70400, Washington, DC 20024. The requester must make the appeal in writing and to be considered timely it must be postmarked within 90 calendar days after the date of the Office's response. The appeal should clearly identify the agency determination that is being appealed, include the assigned docket number, and include a statement explaining the basis for the appeal. To facilitate handling, the requester should include on both the appeal letter and envelope ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The Register of Copyrights or a designee will adjudicate all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(c) *Decisions on appeals.* The Office shall provide its decision on an appeal in writing. A decision that upholds the Office's determination in whole or in

part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Office's decision is remanded or modified on appeal, the Agency will notify the requester of that determination in writing. The Office will then further process the request in accordance with the appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution.* Mediation is a voluntary process. If the Office agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When an appeal is required.* Before seeking review by a court of an agency's adverse determination, a requester must first submit a timely administrative appeal.

[82 FR 9508, Feb. 7, 2017]

§ 203.10 Preservation of records.

The Office must preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2of the National Archives and Records Administration. The Office shall not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under FOIA.

[82 FR 9508, Feb. 7, 2017, as amended at 84 FR 3701, Feb. 13, 2019]

CHARGES FOR RESPONDING TO FOIA REQUESTS

§ 203.11 Fees.

(a) *In general.* (1) The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act 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. The Copyright Office will charge for processing requests under FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees for processing requests, FOIA establishes three categories of requesters:

(i) Commercial use requesters;

(ii) Non-commercial scientific or educational institutions or news media requesters; and

(iii) All other requesters.

(2) Different fees are assessed depending on the category. Requesters may seek a fee waiver, which the Office will consider in accordance with paragraph (k) of this section. To resolve any fee issues that arise under this section, an agency may contact a requester for additional information. The Office shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. The Office will ordinarily collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the United States Copyright Office.

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

(1) *Commercial use request* is a request that asks for information for a use or purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Office's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Office will notify requesters of their placement in this category.

(2) *Direct costs* are those expenses that the Office incurs in searching for, duplicating, and/or reviewing records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a

FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Office may seek verification from the requester that the request is in furtherance of scholarly research and the Office will advise requesters of their placement in this category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a commercial basis and is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution that the records are sought to further scientific research and are not for a commercial use. The Office will advise requesters of their placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Office can also consider a requester's past publication record in making this determination. The Office will advise requesters of their placement in this category.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review includes taking all necessary steps to prepare a record for disclosure, including the process of redacting the record and marking the appropriate exemptions and time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 203.9. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are properly charged even if a record ultimately is not disclosed.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Office will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The Office will charge search fees for all other requesters, subject to the restrictions of paragraph (d) 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.

(ii) For each quarter hour spent by administrative staff in searching for a requested record, $7.50; for each quarter hour spent by professional staff in searching for a requested record, $17.50, with a half hour minimum in both cases.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, 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).

(iv) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the National Archives and Records Administration (NARA), agencies will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication*. The Office will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. The Office will honor a requester's preference for receiving a record in a particular form or format when the Office can readily reproduce it in the form or format requested. For copies of the public records, deposits, or indexes of the Office, the Office will charge fees according to § 201.3 of this chapter. 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) *Review*. The Office will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. If a particular exemption is deemed to no longer apply on appeal, any costs associated with the Office's re-review of the records may be assessed as review fees. Review fees will be charged at the same rates as described in paragraph (c)(1)(ii) of this section.

(4) *Other direct costs*. Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost to the Office.

(d) *Restrictions on charging fees*. (1)(i) If the Copyright Office fails to comply with FOIA's time limits in which to respond to a request, it may not charge search fees or, in the instances of requests from educational institutions, non-commercial scientific institutions, or representatives of the news media, may not charge duplication fees, except as described in this paragraph (d).

(ii) If the Office has determined that unusual circumstances, as defined by FOIA, apply and the agency provides timely written notice to the requester, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If the Office has determined that unusual circumstances, as defined by FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Office may charge fees if the Office has provided timely written notice of the unusual circumstances to the requester in accordance with FOIA and the Office has discussed with the requester (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(2) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, the Office will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(4) No fee will be charged when the total fee, after deducting the first 100 pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25.00.

(5) No fees will be charged for ordinary packaging and mailing costs.

(e) *Notice of anticipated fees in excess of $25.00* (1) When the Office determines or estimates that the fees to be assessed will exceed $25.00, the Office shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Office will advise the requester accordingly. If the request is a noncommercial use requester, the notice shall include the

services provided without charge indicated in paragraph (d)(3) of this section, and shall advise the requester whether those entitlements have been provided.

(2) When a requester has been provided notice of anticipated fees in excess of $25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, to designate which fees the requester is willing to pay, or, for noncommercial requests, to indicate that the requester seeks only the services that can be provided in paragraph (d)(3) of this section without charge. The Office is not required to accept payment in installments.

(3) When the requester has committed to pay some designated amount of fees, but the Office estimates that the total fee will exceed that amount, the Office shall toll processing of the request when it notifies the requester of the estimated fees in excess of the requester's commitment. The Office shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Office shall make available the FOIA Public Liaison to assist the requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the Office chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged.

(g) *Charging interest.* The Office may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Office.

(h) *Aggregating requests.* When the Office reasonably believes that a requester or group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Office may aggregate those requests and charge accordingly. The Office may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, agencies will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraph (i)(2) or (3) of this section, the Copyright Office cannot require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(2) When the Office determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Office may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 calendar days of the billing date, the Office may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Office may require that the requester make an advance payment of the full amount of any anticipated fee before the Office begins to process a new request or continues to process a pending request or any pending appeal. Where the Office has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Office requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the

requester does not pay the advance payment within 30 calendar days after the date of the Office's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The provisions of this section do not apply with respect to the charging of fees for which the copyright law requires a fee to be charged. Requests processed under the Privacy Act of 1974, 5 U.S.C. 552a, shall be subject to the fee schedule found in §204.6 of this chapter. Fees for services by the Office in the administration of the copyright law are contained in §201.3 of this chapter. In instances where records responsive to a request are subject to the statutorily-based fee schedule, the Office will inform the requester of the service and appropriate fee.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how 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.

(2) The Office shall furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public will be considered. The Office will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Office will consider the following criteria:

(A) The Office shall identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Office shall determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Office ordinarily will presume that when a news media requester has satisfied factors in paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Office

and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

[82 FR 9508, Feb. 7, 2017, as amended at 84 FR 3701, Feb. 13, 2019]

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; 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 required 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, U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024–0400, 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's response.

(c) The Office will acknowledge all properly marked requests made by individuals wishing to gain access to view or copy their records or any information pertaining to the individual, within a reasonable time. The Office will acknowledge in writing an individual's request to amend a record pertaining to him or her within ten business days.

(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; 64 FR 36575, July 7, 1999; 65 FR 39820, June 28, 2000; 73 FR 37839, July 2, 2008; 82 FR 9364, Feb. 6, 2017]

§ 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, U.S. Copyright Office, P.O. Box 70400, Washington, DC 20024–0400, 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's response.

(c) The Office will acknowledge all properly marked requests within 20 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; 64 FR 36575, July 7, 1999; 65 FR 39820, June 28, 2000; 73 FR 37839, July 2, 2008; 82 FR 9364, Feb. 6, 2017]

§ 204.6 Fees.

(a) The Copyright Office will provide, free of charge, one copy to an individual 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. Requests for the removal of personally identifiable information requested by the Copyright Office as part of an application for copyright registration are governed by § 201.2(e) of this chapter. Requests for the removal of extraneous personally identifiable information, such as driver's license numbers, social security numbers, banking information, and credit card information from registration records are governed by § 201.2(f) of this chapter. With respect to the correction or amendment of all other information contained in a copyright registration, the set of procedures and related fees are governed by 17 U.S.C. 408(d) and § 201.5 of this chapter. With respect to requests to amend any other record that an individual believes is incomplete, inaccurate, irrelevant or untimely, the request shall be in writing and delivered either by mail addressed to the U.S. Copyright Office, Supervisory Copyright Information Specialist, Copyright Information Section, Attn: Privacy Act Request, P.O. Box 70400, Washington, DC 20024–0400, or in person Monday through Friday between the hours of 8:30 a.m. and 5 p.m., eastern time, except legal holidays, at Room LM–401, Library of Congress, U.S. Copyright Office, 101 Independence Avenue SE., Washington, DC 20559–6000. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to requests for the correction or amendment of records that are governed by this section, 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's response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

[82 FR 9009, Feb. 2, 2017]

§ 204.8 Appeal of refusal to correct or amend an individual's record.

(a) An individual who disagrees with a refusal of the Copyright Office to amend his or her record may request a review of the denial. The individual should submit a written appeal to the General Counsel of the United States Copyright Office at the address specified in § 201.1(c)(1) of this chapter. Appeals, and the envelopes containing them, should be plainly marked ''Privacy Act Appeal.'' Failure to so mark the appeal may delay the General Counsel'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 General Counsel 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 General Counsel 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 in part, the General Counsel'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. If the requester is dissatisfied with the agency's final determination, the individual

may bring a civil action against the Office in the appropriate United States district court.

[82 FR 9364, Feb. 6, 2017]

§ 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 205—LEGAL PROCESSES

Subpart A—General Provisions

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205.21 Scope and purpose.
205.22 Production of documents and testimony.
205.23 Scope of testimony.

AUTHORITY: 17 U.S.C. 702.

SOURCE: 69 FR 39334, June 30, 2004, unless otherwise noted.

Subpart A—General Provisions

§ 205.1 Definitions.

For the purpose of this part:

Demand means an order, subpoena or any other request for documents or testimony for use in a legal proceeding.

Document means any record or paper held by the Copyright Office, including, without limitation, official letters, deposits, recordations, registrations, publications, or other material submitted in connection with a claim for registration of a copyrighted work.

Employee means any current or former officer or employee of the Copyright Office, as well as any individual subject to the jurisdiction, supervision, or control of the Copyright Office.

General Counsel, unless otherwise specified, means the General Counsel and Associate Register of Copyrights or his or her designee.

Legal proceeding means any pretrial, trial, and post-trial stages of existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings. This phrase also includes state court proceedings (including grand jury proceedings) and any other state or local legislative and administrative proceedings.

Office means the Copyright Office, including any division, section, or operating unit within the Copyright Office.

Official business means the authorized business of the Copyright Office.

Testimony means a statement in any form, including a personal appearance before a court or other legal tribunal, an interview, a deposition, an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746, a telephonic, televised, or videotaped statement or any response given during discovery or similar proceeding, which response would involve more than the production of documents, including a declaration under 35 U.S.C. 25 or a declaration under penalty of perjury pursuant to 28 U.S.C. 1746.

United States means the Federal Government, its departments and agencies,

individuals acting on behalf of the Federal Government, and parties to the extent they are represented by the United States.

[82 FR 9364, Feb. 6, 2017]

§ 205.2 Address for mail and service; telephone number.

(a) Mail under this part should be addressed to the General Counsel at the address specified in § 201.1(c)(1) of this chapter.

(b) Service by hand shall be made upon an authorized person from 8:30 a.m. to 5 p.m., Monday through Friday in the Copyright Information Section, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE., Washington, DC. Persons authorized to accept service of process are the General Counsel of the Copyright Office and his or her designees.

(c) The Office of the General Counsel may be reached by telephone during normal business hours specified in paragraph (b) of this section at 202–707–8380.

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008; 82 FR 9365, Feb. 6, 2017]

§ 205.3 Waiver of rules.

In extraordinary situations, when the interest of justice requires, the General Counsel may waive or suspend the rules of this part, *sua sponte* or on petition of an interested party, subject to such requirements as the General Counsel may impose on the parties. However, the inclusion of certain legal processes within the scope of these rules, e.g., state legal proceedings, does not represent a waiver of any claim of immunity, privilege, or other defense by the Office in a legal proceeding, including but not limited to, sovereign immunity, preemption, or lack of relevance. This rule does not create any right or benefit, substantive or procedural, enforceable at law by a party against the Copyright Office, the Library of Congress, or the United States.

§ 205.4 Relationship of this part to the Federal Rules of Civil and Criminal Procedure.

Nothing in this part waives any requirement under the Federal Rules of Civil or Criminal Procedure.

§ 205.5 Scope of this part related to Copyright Office duties under title 17 of the U.S. Code.

This part relates only to legal proceedings, process, requests and demands relating to the Copyright Office's performance of its duties pursuant to title 17 of the United States Code. Legal proceedings, process, requests and demands relating to other matters (e.g., personal injuries, employment matters, etc.) are the responsibility of the General Counsel of the Library of Congress and are governed by 36 CFR part 703.

§§ 205.6–205.10 [Reserved]

Subpart B—Service of Process

§ 205.11 Scope and purpose.

(a) This subpart provides the procedures governing service of process on the Copyright Office and its employees in their official capacity. These regulations provide the identity of Copyright Office officials who are authorized to accept service of process. The purpose of this subpart is to provide a centralized location for receipt of service of process to the Office. Such centralization will provide timely notification of legal process and expedite the Office's response. Litigants also must comply with all requirements pertaining to service of process that are established by statute, court rule and rule of procedure including the applicable provisions of the Federal Rules of Civil Procedure governing service upon the United States.

(b) This subpart does not apply to service of process made on an employee personally for matters not related to official business of the Office. Process served upon a Copyright Office employee in his or her individual capacity must be served in compliance with the applicable requirements for service of

process established by statute, court rule, or rule of procedure.

[69 FR 39334, June 30, 2004, as amended at 82 FR 9365, Feb. 6, 2017]

§ 205.12 Process served on the Register of Copyrights or an employee in his or her official capacity.

(a) Summonses, complaints and all other process directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity should be served on the General Counsel of the Copyright Office or his or her designee as indicated in § 205.2 of this part. To effect proper service, the requirements of Rule 4(i) of the Federal Rules of Civil Procedure must also be satisfied by effecting service on both the United States Attorney for the district in which the action is brought and the Attorney General, Attn: Director of Intellectual Property Staff, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(b) If, notwithstanding paragraph (a) of this section, any employee of the Office is served with a summons or complaint in connection with the conduct of official business, that employee shall immediately notify and deliver the summons or complaint to the Office of the General Counsel of the Copyright Office.

(c) Any employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and mode of service.

(d) The Office will accept service of process for an employee only when the legal proceeding is brought in connection with the conduct of official business carried out in the employee's official capacity.

(e) When a legal proceeding is brought to hold an employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the employee is to be served in accordance with any applicable statute, court rule, or rule of procedure. Service of process in this case is inadequate when made only on the General Counsel. An employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the General Counsel of the Copyright Office.

§ 205.13 Complaints served on the Register of Copyrights pursuant to 17 U.S.C. 411(a).

When an action has been instituted pursuant to 17 U.S.C. 411(a) for infringement of the copyright of a work for which registration has been refused, notice of the institution of the action and a copy of the complaint must be served on the Register of Copyrights by sending such documents to the General Counsel of the Copyright Office to the General Counsel of the Copyright Office via email to 411filings@copyright.gov. The notice must be in the form of a letter, as an attached file, that is clearly identified as a 411(a) notice. Both the letter and the email's subject line should state: ''Section 411(a) Notice to the Register of Copyrights.'' Attachments must be submitted in Portable Document Format (PDF), assembled in an orderly form, and uploaded as individual electronic files (*i.e.*, not .zip files). Attachments to a single email should be no greater than 20 MB in total. The files must be viewable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the file. If submission of a notice via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202–707–8380. In compliance with Fed. R. Civ. P. Sec. 4(i), a notice of the institution of the action and a copy of the complaint must also be served on both the United States Attorney for the district in which the action is brought and the United States Department of Justice, directed to the Attorney General, Attn: Director of Intellectual Property Staff, Civil Division, Department of Justice, Washington, DC 20530.

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008; 82 FR 9365, Feb. 6, 2017; 85 FR 10604, Feb. 25, 2020]

§ 205.14 Court requests to the Register of Copyrights pursuant to 17 U.S.C. 411(b)(2).

Where there is an allegation that a copyright registration certificate includes inaccurate information with knowledge that it was inaccurate and the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration, pursuant to 17 U.S.C. 411(b)(2), the court shall request the opinion of the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration. The request should be sent to the General Counsel of the Copyright Office via email to *411filings@copyright.gov*. Attachments to a single email should be no greater than 20 MB in total. If submission of a request via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202–707–8380.

[85 FR 10605, Feb. 25, 2020]

§ 205.15 Court notices to the Register of Copyrights pursuant to 17 U.S.C. 508.

Pursuant to 17 U.S.C. 508, within one month after the filing of any action under title 17, notice of the names and addresses of the parties and the title, author, and registration number of each work involved in the action, including any other copyrighted work later included by subsequent amendment, answer, or other pleading, must be served by the clerk of the court on the Register of Copyrights. Further, the clerk of the court must notify the Register within one month after any final order or judgment is issued in the case, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court. These notices must be sent to the General Counsel of the Copyright Office via email to *508filings@copyright.gov*. Notices must include a fully completed PDF version of the Administrative Office of the U.S. Courts' form AO–121, ''Report on the Filing or Determination of an Action or Appeal Regarding a Copyright,'' available at the U.S. Courts' website: *https://www.uscourts.gov/forms/other-forms/report-filing-or-determination-action-or-appeal-regarding-copyright*. If submission of a notice via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202–707–8380.

[85 FR 10605, Feb. 25, 2020]

§§ 205.16–205.20 [Reserved]

Subpart C—Testimony By Employees and Production of Documents in Legal Proceedings in Which the Office Is Not a Party

§ 205.21 Scope and purpose.

(a) This subpart prescribes policies and procedures of the Copyright Office governing testimony, in legal proceedings in which the Office is not a party, by Office employees in their official capacities and the production of Office documents for use in legal proceedings pursuant to a demand, request, subpoena or order.

(b) The purpose of this subpart is:

(1) To conserve the time of Office employees for conducting official business;

(2) To minimize the possibility of involving the Office in the matters of private parties or other issues which are not related to the mission of the Office;

(3) To prevent the public from confusing personal opinions of Office employees with Office policy;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process, minimize disruption of the decision-making process, and prevent interference with the Office's administrative functions.

(c) An employee of the Office may not voluntarily appear as a witness or voluntarily testify in a legal proceeding relating to his or her official capacity without proper authorization under this subpart.

(d) This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is asked to testify as an expert on a matter in which that employee did not personally participate while at the Office so long as the former employee testifies concerning his or her personal opinion and does not purport to speak for or on behalf of the Copyright Office.

§ 205.22 Production of documents and testimony.

(a) Generally, all documents and material submitted to the Copyright Office as part of an application to register a claim to copyright are available for public inspection and copying. It is possible, therefore, to obtain those materials without use of a legal process. Anyone seeking such documents must contact the Records Research and Certification Section of the Office. 37 CFR 201.2(b)(1). Certified copies of public documents and public records are self-authenticating. FED. R. EVID. 902 and 1005; *see also*, FED. R. CIV. p. 44(a)(1). In certain specified circumstances, information contained in the in-process files may be obtained by complying with the procedures of 37 CFR 201.2(b)(3). Correspondence between a copyright claimant or his or her agent and the Copyright Office in a completed registration, recordation, or refusal to register is also available for public inspection. Section 201.2(d) of this chapter prescribes the method for requesting copies of copyright registration records. An attorney engaged in actual or prospective litigation who submits a court order or a completed Litigation Statement may obtain a copy of the deposit if his or her request is found to comply with the requirements set out in 37 CFR 201.2(d)(2). The fees associated with various document requests, searches, copies, and expedited handling are listed in 37 CFR 201.3. Other publications containing Copyright Office procedures and practices are available to the public without charge from the Copyright Office or its website: *http://www.copyright.gov*. The Office website also allows online searching of copyright registration information and information pertaining to documents recorded with the Copyright Office beginning January 1, 1978. Pre-1978 copyright registration information and document recordation information is available to the public in the Copyright Office during regular business hours. If the information sought to be obtained from the Office is not available through these Office services, demands and subpoenas for testimony or documents may be served as follows:

(1) *Demands for testimony or documents.* All demands, requests, subpoenas or orders for production of documents or testimony in a legal proceeding directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity must be in writing and should be served on the General Counsel of the Copyright Office as indicated in § 205.2 of this part and in accordance with the Federal Rules of Civil or Criminal Procedure.

(2) *Affidavits.* Except when the Copyright Office is a party to the legal proceeding, every demand, request or subpoena shall be accompanied by an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746. Such affidavit or declaration shall contain a written statement setting forth the title of the legal proceeding; the forum; the requesting party's interest in the legal proceeding; the reasons for the demand, request, or subpoena; a showing that the desired testimony or document is not reasonably available from any published or other written source, (*e.g.*, 37 CFR, Chapter II; Compendium of U.S. Copyright Office Practices, Third Edition; other written practices of the Office; circulars; the Copyright Office website) and is not available by other established procedure, e.g., 37 CFR 201.2, 201.3. If testimony is requested in the affidavit or declaration, it shall include the intended use of the testimony, a detailed summary of the testimony desired, and a showing that no document could be provided and used in lieu of the requested testimony. The purpose of these requirements is to permit the General Counsel of the Copyright Office to make an informed decision as to whether testimony or production of a document should be authorized. The decision by the General Counsel will be based on consideration of the purposes set forth in § 205.21(b) of this part, on the evaluation of the requesting party's need for the testimony

and any other factor warranted by the circumstances. Typically, when the information requested is available through other existing Office procedures or materials, the General Counsel will not authorize production of documents or testimony.

(b) No Copyright Office employee shall give testimony concerning the official business of the Office or produce any document in a legal proceeding other than those made available by the Records Research and Certification Section under existing regulations without the prior authorization of the General Counsel. Without prior approval from the General Counsel of the Copyright Office, no Office employee shall answer inquiries from a person not employed by the Library of Congress or the Department of Justice regarding testimony or documents in connection with a demand, subpoena or order. All inquiries involving demands, subpoenas, or orders shall be directed to the General Counsel of the Copyright Office.

(c) Any Office employee who receives a demand, request, subpoena or order for testimony or the production of documents in a legal proceeding shall immediately notify the General Counsel of the Copyright Office at the phone number indicated in §205.2 of this part and shall immediately forward the demand to the General Counsel.

(d) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand, request or subpoena to address interests or concerns of the Office. Failure of the attorney or party to cooperate in good faith under this part may serve as the basis for the General Counsel to deny authorization for the testimony or production of documents sought in the demand.

(e) A determination under this part regarding authorization to respond to a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance. The Copyright Office reserves the right to oppose any demand on any appropriate legal ground independent of any determination under this part, including but not limited to, sovereign immunity, preemption, privilege, lack of relevance, or technical deficiency.

(f) *Office procedures when an employee receives a demand or subpoena.* (1) If the General Counsel has not acted by the return date, the employee must appear at the time and place set forth in the subpoena (unless otherwise advised by the General Counsel) and inform the court (or other legal authority) that the demand has been referred for the prompt consideration of the General Counsel and shall request the court (or other legal authority) to stay the demand pending receipt of the requested instructions.

(2) If the General Counsel makes a determination not to authorize testimony or the production of documents, but the subpoena is not withdrawn or modified and Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena unless advised otherwise by the General Counsel. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony or to produce the requested document. If a court (or other legal authority) rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States* ex rel.*Touhy* v. *Ragen*, 340 U.S. 462 (1951).

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008; 82 FR 9365, Feb. 6, 2017]

§205.23 Scope of testimony.

(a)(1) If a Copyright Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert testimony, or opinion, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an Office employee is authorized to testify in connection with his or her involvement or assistance in a proceeding or matter before the Office, that employee is further prohibited from giving testimony in response to an inquiry

about the bases, reasons, mental processes, analyses, or conclusions of that employee in the performance of his or her official functions.

(2) The General Counsel may authorize an employee to appear and give expert testimony or opinion testimony upon the showing, pursuant to §205.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Copyright Office or the United States.

(b) If an Office employee is authorized to testify, the employee will generally be prohibited from providing testimony in response to questions which seek, for example:

(1) To elicit information about the employee's:

(i) Qualifications to examine or otherwise consider a particular copyright application.

(ii) Usual practice or whether the employee followed a procedure set out in any Office manual of practice in a particular case.

(iii) Consultation with another Office employee.

(iv) Familiarity with:

(A) Preexisting works that are similar.

(B) Registered works, works sought to be registered, a copyright application, registration, denial of registration, or request for reconsideration.

(C) Copyright law or other law.

(D) The actions of another Office employee.

(v) Reliance on particular facts or arguments.

(2) To inquire into the manner in and extent to which the employee considered or studied material in performing the function.

(3) To inquire into the bases, reasons, mental processes, analyses, or conclusions of that Office employee in performing the function.

(c) In exceptional circumstances, the General Counsel may waive the limitations set forth in paragraph (b) of this section pursuant to §205.3.

[69 FR 39334, June 30, 2004, as amended at 82 FR 9365, Feb. 6, 2017]

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

Subpart A—Royalties and Statements of Account Under Non-Blanket Compulsory License

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210.2 Definitions.
210.3 Accounting requirements where sales revenue is ''recognized.''
210.4 Accounting requirements for offsetting phonorecord reserves with returned phonorecords.
210.5 Situations in which a compulsory licensee is barred from maintaining reserves.
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210.10 Statements required for limitation on liability for digital music providers for the transition period prior to the license availability date.
210.11 Record companies using individual download licenses.
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Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

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210.33 Annual reporting by the mechanical licensing collective.
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AUTHORITY: 17 U.S.C. 115, 702.

SOURCE: 79 FR 56206, Sept. 18, 2014, unless otherwise noted.

Subpart A—Royalties and Statements of Account Under Non-Blanket Compulsory License

SOURCE: 79 FR 56206, Sept. 18, 2014. Redesignated at 85 FR 58143, Sept. 17, 2020.

§ 210.1 General.

This subpart prescribes rules for the payment of royalties and the preparation and service of statements of account under the compulsory license for the making and distribution of phonorecords of nondramatic musical works, including by means of a digital phonorecord delivery, pursuant to 17 U.S.C. 115 and the rates and terms in part 385 of this title. Rules governing notices of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works are located in § 201.18. On and after the license availability date, this subpart shall not apply with respect to any digital phonorecord delivery made pursuant to the compulsory license unless such digital phonorecord delivery is made by a record company under an individual download license under 17 U.S.C. 115(b)(3), which must be reported and paid for in accordance with § 210.11; that is, this subpart shall not apply where a digital music provider reports and pays royalties under a blanket license under 17 U.S.C. 115(d)(4)(A)(i).

[79 FR 56206, Sept. 18, 2014, as amended at 83 FR 63065, Dec. 7, 2018. Redesignated and amended at 85 FR 58143, Sept. 17, 2020]

§ 210.2 Definitions.

As used in this subpart:

(a) A *Monthly Statement of Account* or *Monthly Statement* is a statement accompanying monthly royalty payments identified in 17 U.S.C. 115(c)(2)(I), and required by that section to be filed under the compulsory license to make and distribute phonorecords of nondramatic musical works, including by means of a digital phonorecord delivery.

(b) An *Annual Statement of Account* or *Annual Statement* is a statement identified in 17 U.S.C 115(c)(2)(I), and required by that section to be filed under the compulsory license to make and distribute phonorecords of nondramatic musical works, including by means of a digital phonorecord delivery. Such term, when used in this rule, includes an Amended Annual Statement of Account filed pursuant to § 210.7(d)(2)(iii).

(c) A *digital phonorecord delivery* means each individual delivery of a phonorecord by digital transmission of a sound recording that 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 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. A digital phonorecord delivery does not include any transmission that did not result in a specifically identifiable reproduction of the entire product being transmitted, and for which the distributor did not charge, or fully refunded, any monies that would otherwise be due for the relevant transmission. Notwithstanding the foregoing, a permanent download, a limited download, or an interactive stream, as defined in 17 U.S.C. 115(e), is a digital phonorecord delivery. A digital phonorecord delivery does not include the digital transmission of sounds accompanying a motion picture or other audiovisual work as defined in 17 U.S.C. 101.

(d) *Ringtone* shall have the meaning given in § 385.2 of this title.

(e) The term *copyright owner*, in the case of any work having more than one copyright owner, means any one of the co-owners.

(f) A *compulsory licensee* is a person or entity exercising the compulsory license to make and distribute phonorecords of nondramatic musical

works as provided under 17 U.S.C. 115, including by means of a digital phonorecord delivery.

(g) A phonorecord is considered *distributed* if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord, which shall occur as follows:

(1) In the case of physical phonorecords relinquished from possession for purposes other than sale, at the time at which the compulsory licensee actually first parts with possession;

(2) In the case of physical 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;

(3) In the case of physical phonorecords relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange:

(i) At the time when revenue from a sale of the phonorecord is ''recognized'' by the compulsory licensee; or

(ii) 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 GAAP.

(4) In the case of a digital phonorecord delivery, on the date that the phonorecord is digitally transmitted.

(h) A *phonorecord reserve* comprises the number of phonorecords made under a particular compulsory license, 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 (g)(3) of this section, and that have not been considered 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 GAAP.

(i) A *negative reserve balance* comprises the aggregate number of phonorecords made under a particular compulsory license, if any, that have been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (g)(3) 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.

(j) *GAAP* means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this subpart.

(k) Any terms not otherwise defined in this section shall have the meanings set forth in 17 U.S.C. 115(e).

[79 FR 56206, Sept. 18, 2014, as amended at 83 FR 63065, Dec. 7, 2018. Redesignated at 85 FR 58143, Sept. 17, 2020. Amended at 86 FR 2203, Jan. 11, 2021]

§ 210.3 Accounting requirements where sales revenue is "recognized."

Where under § 210.2(g)(3)(i), 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:

(a) 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

§ 210.2(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(b) 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 compulsory 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 § 210.2(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(c) 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.

(d) Digital phonorecord deliveries shall not be considered as accompanied by a privilege of return as described in § 210.2(g)(3), and the compulsory licensee shall not take digital phonorecord deliveries into account in establishing phonorecord reserves.

[79 FR 56206, Sept. 18, 2014. Redesignated at 85 FR 58143, Sept. 17, 2020]

§ 210.4 Accounting requirements for offsetting phonorecord reserves with returned phonorecords.

(a) 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 § 210.2(g)(3), where the phonorecord is returned to the compulsory licensee for credit or exchange before said compulsory licensee is considered to have ''voluntarily and permanently parted with possession'' of the phonorecord as described in § 210.2(g), the compulsory licensee may use such phonorecord to reduce a ''phonorecord reserve,'' as defined in § 210.2(h).

(b) 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:

(1) 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 in § 210.2(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(2) 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 compulsory 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 in § 210.2(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(3) 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 § 210.2(i).

(c) 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 § 210.2(g)(3). In accordance with § 210.2(g)(3)(ii), any phonorecord remaining in a particular phonorecord reserve nine months from the month in which the particular reserve was established shall be considered ''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 § 210.6(d)(2).

(d) 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. Digital phonorecord deliveries may be credited against such negative reserve balance, but only if such digital phonorecord deliveries have the same royalty rate as physical phonorecords under part 385 of this title. The nine-month limit provided in § 210.2(g)(3)(ii) 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 such phonorecord shall not be considered ''distributed'' within the meaning of § 210.2(g).

(e) 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.

[79 FR 56206, Sept. 18, 2014. Redesignated and amended at 85 FR 58143, Sept. 17, 2020]

§ 210.5 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 compulsory licensee actually first parts with possession. For these purposes the compulsory licensee shall include:

(a) 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;

(b) 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.

[79 FR 56206, Sept. 18, 2014, as amended at 82 FR 9365, Feb. 6, 2017. Redesignated at 85 FR 58143, Sept. 17, 2020]

§ 210.6 Monthly statements of account.

(a) *Forms.* The Copyright Office does not provide printed forms for the use of persons serving Monthly Statements of Account.

(b) *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:

(1) The period (month and year) covered by the Monthly Statement.

(2) 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.

(3) 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.

(4) 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 (c) of this section.

(5) The total royalty payable to the relevant copyright owner for the month covered by the Monthly Statement, computed in accordance with the requirements of this section and the formula specified in paragraph (d) of this section, including detailed information regarding how the royalty was computed.

(6) The amount of late fees, if applicable, included in the payment associated with the Monthly Statement.

(7) In any case where the compulsory licensee falls within the provisions of § 210.5, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that section.

(8) Detailed instructions on how to request records of any promotional or free trial uses of the copyright owner's works that are required to be maintained or provided under applicable provisions of part 385 of this title, or any other provisions, including, where applicable, records required to be maintained or provided by any third parties that were authorized by the compulsory licensee to engage in such uses during any part of the month. If this information is provided, Monthly Statements need not reflect phonorecords subject to any promotional or free trial royalty rate of zero that may be provided in part 385 of this title.

(c) *Specific content of monthly statements*—(1) *Accounting of phonorecords subject to a cents rate royalty structure.* The information called for by paragraph (b)(4) of this section shall, with respect to each nondramatic musical work as to which the compulsory licensee has made and distributed phonorecords subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a cents-per-unit basis, include a separate listing of each of the following items of information:

(i) The number of phonorecords made during the month covered by the Monthly Statement.

(ii) The number of phonorecords that, during the month covered by the Monthly Statement and regardless of when made, were either:

(A) Relinquished from possession for purposes other than sale;

(B) Relinquished from possession for purposes of sale without any privilege of returning unsold phonorecords for credit or exchange;

(C) Relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange;

(D) Returned to the compulsory licensee for credit or exchange; or

(E) 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).

(iii) 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 § 210.2(g)(3)(i), or were comprised in a phonorecord reserve that lapsed after nine months under § 210.2(g)(3)(ii).

(iv) The per unit statutory royalty rate applicable to the relevant configuration; and

(v) The total royalty payable for the month covered by the Monthly Statement (*i.e.*, the result in paragraph

(d)(2)(v) of this section) for the item described by the set of information called for, and broken down as required, by paragraph (c)(1) of this section.

(vi) The phonorecord identification information required by paragraph (c)(3) of this section.

(2) *Accounting of phonorecords subject to a percentage rate royalty structure.* The information called for by paragraph (b)(4) of this section shall, with respect to each nondramatic musical work as to which the compulsory licensee has made and distributed phonorecords subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, include a detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient to allow the copyright owner to assess the manner in which the licensee determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the following information:

(i) The number of plays, constructive plays, or other payable units, of the relevant sound recording for the month covered by the Monthly Statement for the relevant offering.

(ii) The total royalty payable for the month for the item described by the set of information called for, and broken down as required, by paragraph (c)(3) of this section (*i.e.*, the per-work royalty allocation for the relevant sound recording and offering).

(iii) The phonorecord identification information required by paragraph (c)(3) of this section.

(3) *Identification of phonorecords in monthly statements.* The information required by this paragraph shall include, and if necessary shall be broken down to identify separately, the following:

(i) The title of the nondramatic musical work subject to compulsory license.

(ii) A reference number or code identifying the relevant Notice of Intention, if the compulsory licensee chose to include such a number or code on its relevant Notice of Intention for the compulsory license.

(iii) The International Standard Recording Code (ISRC) associated with the relevant sound recording, if known, and at least one of the following, as applicable and available for tracking sales and/or usage:

(A) The catalog number or numbers and label name or names, associated with the phonorecords;

(B) The Universal Product Code (UPC) or similar code used on or associated with the phonorecords; or

(C) The sound recording identification number assigned by the compulsory licensee or a third-party distributor to the relevant sound recording.

(iv) The names of the principal recording artist or group engaged in rendering the performances fixed on the phonorecords.

(v) The playing time of the relevant sound recording, except that playing time is not required in the case of ringtones or licensed activity to which no overtime adjustment is applicable.

(vi) If the compulsory licensee chooses to allocate its payment between coowners of the copyright in the nondramatic musical work, as described in paragraph (g)(1) of this section, and thus pays the copyright owner (or agent) receiving the statement less than one hundred percent of the applicable royalty, the percentage share paid.

(vii) The names of the writer or writers of the nondramatic musical work, or the International Standard Name Identifiers (ISNIs) or other unique identifier of the writer or writers, if known.

(viii) The International Standard Musical Work Code (ISWC) or other unique identifier for the nondramatic musical work, if known.

(ix) Identification of the relevant phonorecord configuration (for example: compact disc, permanent digital download, ringtone) or offering (for example: limited download, music bundle) for which the royalty was calculated, including, if applicable and except for physical phonorecords, the name of the third-party distributor of the configuration or offering.

(d) *Royalty payment and accounting*—(1) *In general.* The total royalty called for by paragraph (b)(5) of this section shall be computed so as to include

every phonorecord ''distributed'' during the month covered by the Monthly Statement.

(2) *Phonorecords subject to a cents rate royalty structure.* For phonorecords subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a cents-per-unit basis, the amount of the royalty payment shall be calculated as follows:

(i) *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:

(A) Any phonorecords relinquished from possession by the compulsory licensee for purposes of sale without the privilege of return; and

(B) Any phonorecords relinquished from possession for purposes other than sale.

(ii) *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 § 210.5.

(iii) *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:

(A) 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

(B) The number of phonorecords relinquished from possession by the compulsory licensee, during the month covered by the Monthly Statement, for purposes other than sale.

(iv) *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.

(v) *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 set forth in applicable provisions of part 385 of this title.

(3) *Phonorecords subject to a percentage rate royalty structure.* For phonorecords subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, the amount of the royalty payment shall be calculated as provided in applicable provisions of part 385 of this title. The calculations shall be made in

good faith and on the basis of the best knowledge, information, and belief of the licensee at the time payment is due, and subject to the additional accounting and certification requirements of 17 U.S.C. 115(c)(2)(I) and this section. The following additional provisions shall also apply:

(i) A licensee may, in cases where the final public performance royalty has not yet been determined, compute the public performance royalty component based on the interim public performance royalty rate, if established; or alternatively, on a reasonable estimation of the expected royalties to be paid in accordance with GAAP. Royalty payments based on anticipated payments or interim public performance royalty rates must be reconciled on the Annual Statement of Account, or by complying with §210.7(d)(2)(iii) governing Amended Annual Statements of Account.

(ii) When calculating the per-work royalty allocation for each work, as described in applicable provisions of part 385 of this title, an actual or constructive per-play allocation is to be calculated to at least the hundredth of a cent (*i.e.*, to at least four decimal places).

(e) *Clear statements.* The information required by paragraphs (b) and (c) of this section requires intelligible, legible, and unambiguous statements in the Monthly Statements of Account without incorporation of facts or information contained in other documents or records.

(f) *Certification.* (1) Each Monthly Statement of Account shall be accompanied by:

(i) The printed or typewritten name of the person who is signing and certifying the Monthly Statement of Account.

(ii) A signature, which in the case of a compulsory licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature and certification.

(iv) If the compulsory licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the Monthly Statement of Account.

(v) One of the following statements:

(A) I certify that (1) I am duly authorized to sign this Monthly Statement of Account on behalf of the compulsory licensee; (2) I have examined this Monthly Statement of Account; and (3) 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; or

(B) I certify that (1) I am duly authorized to sign this Monthly Statement of Account on behalf of the compulsory licensee, (2) I have prepared or supervised the preparation of the data used by the compulsory licensee and/or its agent to generate this Monthly Statement of Account, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this Monthly Statement of Account was prepared by the compulsory licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed Certified Public Accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly statements that accurately reflect, in all material respects, the compulsory licensee's usage of musical works, the statutory royalties applicable thereto, and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(2) If the Monthly Statement of Account is served by mail or by reputable courier service, certification of the Monthly Statement of Account by the compulsory licensee shall be made by handwritten signature. If the Monthly Statement of Account is served electronically, certification of the Monthly Statement of Account by the compulsory licensee shall be made by electronic signature as defined in section 7006(5) of title 15 of the United States Code.

(g) *Service.* (1) The service of a Monthly Statement of Account on a copyright owner under this subpart may be

accomplished by means of service on either the copyright owner or an agent of the copyright owner with authority to receive Statements of Account on behalf of the copyright owner. In the case where the work has more than one copyright owner, the service of a Statement of Account on at least one co-owner or upon an agent of at least one of the co-owners shall be sufficient with respect to all co-owners. The compulsory licensee may choose to allocate its payment between co-owners. In such a case the compulsory licensee shall provide each co-owner (or its agent) a Monthly Statement reflecting the percentage share paid to that co-owner. Each Monthly Statement of Account shall be served on the copyright owner or the agent to whom or which it is directed by mail, by reputable courier service, or by electronic delivery as set forth in paragraph (g)(2) of this section on or before the 20th day of the immediately succeeding month. The royalty payment for a month also shall be served on or before the 20th day of the immediately succeeding month. The Monthly Statement and payment may be sent together or separately, but if sent separately, the payment must include information reasonably sufficient to allow the payee to match the Monthly Statement to the payment. However, in the case where the compulsory licensee has served its Notice of Intention upon an agent of the copyright owner pursuant to § 201.18 of this chapter, the compulsory licensee is not required to serve Monthly Statements of Account or make any royalty payments until the compulsory licensee receives from the agent with authority to receive the Notice of Intention notice of the name and address of the copyright owner or its agent upon whom the compulsory licensee shall serve Monthly Statements of Account and the monthly royalty fees. Upon receipt of this information, the compulsory licensee shall serve Monthly Statements of Account and all royalty fees covering the intervening period upon the person or entity identified by the agent with authority to receive the Notice of Intention by or before the 20th day of the month following receipt of the notification. It shall not be necessary to file a copy of the Monthly Statement in the Copyright Office.

(2) A copyright owner or authorized agent may send a licensee a demand that Monthly Statements of Account be submitted in a readily accessible electronic format consistent with prevailing industry practices applicable to comparable electronic delivery of comparable financial information.

(3) When a compulsory licensee receives a request to deliver or make available Monthly Statements of Account in electronic form, or a request to revert back to service by mail or reputable courier service, the compulsory licensee shall make such a change effective with the first accounting period ending at least 30 days after the compulsory licensee's receipt of the request and any information (such as a postal or email address, as the case may be) that is necessary for the compulsory licensee to make the change.

(4)(i) In any case where a Monthly Statement of Account is sent by mail or reputable courier service and the Monthly Statement of Account is returned to the sender because the copyright owner or agent is no longer located at that address or has refused to accept delivery, or the Monthly Statement of Account is sent by electronic mail and is undeliverable, 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 or attempted delivery by courier service or electronic mail, may be filed in the Licensing Section of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

(ii) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under this section.

(iii) 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.

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

(5) Subject to paragraph (g)(6) of this section, 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 17 U.S.C. 115. The Annual Statement of Account described in §210.7 of this subpart does not replace any Monthly Statement of Account.

(6) Royalties under 17 U.S.C. 115 shall not be considered payable, and no Monthly Statement of Account shall be required, until the compulsory licensee's cumulative unpaid royalties for the copyright owner equal at least one cent. Moreover, in any case in which the cumulative unpaid royalties under 17 U.S.C. 115 that would otherwise be payable by the compulsory licensee to the copyright owner are less than $5, and the copyright owner has not notified the compulsory licensee in writing that it wishes to receive Monthly Statements of Account reflecting payments of less than $5, the compulsory licensee may choose to defer the payment date for such royalties and provide no Monthly Statements of Account until the earlier of the time for rendering the Monthly Statement of Account for the month in which the compulsory licensee's cumulative unpaid royalties under section 17 U.S.C. 115 for the copyright owner exceed $5 or the time for rendering the Annual Statement of Account, at which time the compulsory licensee may provide one statement and payment covering the entire period for which royalty payments were deferred.

(7) If the compulsory licensee is required, under applicable tax law and regulations, to make backup withholding from its payments required hereunder, the compulsory licensee shall indicate the amount of such withholding on the Monthly Statement or on or with the payment.

(8) If a Monthly Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If a Monthly Statement of Account is sent by a reputable courier, documentation from the courier showing the first date of attempted delivery shall be sufficient to prove that service was timely. If a Monthly Statement of Account or a link thereto is sent by electronic mail, a return receipt shall be sufficient to prove that service was timely. In the absence of the foregoing, the compulsory licensee shall bear the burden of proving that the Monthly Statement of Account was served in a timely manner.

[79 FR 56206, Sept. 18, 2014, as amended at 79 FR 60978, Oct. 9, 2014; 83 FR 63065, Dec. 7, 2018; 84 FR 10686, Mar. 22, 2019. Redesignated at 85 FR 58143, Sept. 17, 2020; 86 FR 32643, June 22, 2021]

§ 210.7 Annual statements of account.

(a) *Forms.* The Copyright Office does not provide printed forms for the use of persons serving Annual Statements of Account.

(b) *Annual period.* Any Annual Statement of Account shall cover the full fiscal year of the compulsory licensee.

(c) *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:

(1) The fiscal year covered by the Annual Statement of Account.

(2) 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.

(3) If the compulsory licensee is a business organization, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity.

(4) 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).

(5) 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 (d) of this section.

(6) The total royalty payable for the fiscal year covered by the Annual Statement computed in accordance with the requirements of § 210.6, and, in the case of offerings for which royalties are calculated pursuant to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, calculations showing in detail how the royalty was computed (for these purposes, the applicable royalty as specified in applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a cents-per-unit basis shall be payable for every phonorecord ''distributed'' during the fiscal year covered by the Annual Statement).

(7) 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.

(8) In any case where the compulsory license falls within the provisions of § 210.5, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that section.

(9) Any late fees, if applicable, included in any payment associated with the Annual Statement.

(d) *Specific content of annual statements*—(1) *Accounting of phonorecords subject to a cents rate royalty structure.* The information called for by paragraph (c)(5) of this section shall, with respect to each nondramatic musical work as to which the compulsory licensee has made and distributed phonorecords subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a cents-per-unit basis, include a separate listing of each of the following items of information:

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

(ii) 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.

(iii) 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.

(iv) The number of phonorecords ''distributed'' by the compulsory licensee during all years before the fiscal year covered by the Annual Statement.

(v) 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 ''distributed'' by the end of that year.

(vi) The number of phonorecords ''distributed'' by the compulsory licensee during the fiscal year covered by the Annual Statement.

(vii) The per unit statutory royalty rate applicable to the relevant configuration.

(viii) The total royalty payable for the fiscal year covered by the Annual Statement for the item described by the set of information called for, and broken down as required, by this paragraph (d)(1).

(ix) The phonorecord identification information required by paragraph (d)(3) of this section.

(2) *Accounting of phonorecords subject to a percentage rate royalty structure.* (i) The information called for by paragraph (c)(5) of this section shall identify each offering for which royalties are to be calculated separately and, with respect to each nondramatic musical work as to which the compulsory licensee has made and distributed phonorecords subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, include the number

of plays, constructive plays, or other payable units during the fiscal year covered by the Annual Statement, together with, and which if necessary shall be broken down to identify separately, the following:

(A) The total royalty payable for the fiscal year for the item described by the set of information called for, and broken down as required, by paragraph (d)(3) of this section (*i.e.,* the per-work royalty allocation for the relevant sound recording and offering).

(B) The phonorecord identification information required by paragraph (d)(3) of this section.

(ii) If the information given under paragraph (d)(2)(i) of this section does not reconcile, the Annual Statement shall also include a clear and detailed explanation of the difference.

(iii) In any case where a licensee serves an Annual Statement of Account based on anticipated payments or interim public performance royalty rates prior to the final determination of final public performance royalties for all musical works used by the service in the relevant fiscal year, the licensee shall serve an Amended Annual Statement of Account within six months from the date such public performance royalties have been established. The Amended Annual Statement of Account shall recalculate the royalty fees reported on the relevant Annual Statement of Account to adjust for any change to the public performance rate used to calculate the royalties reported. Service shall be made in accordance with paragraph (g) of this section. Certification of the Amended Annual Statement shall be made in accordance with paragraph (f) of this section, except that the CPA examination under paragraph (f)(2) of this section may be limited to the licensee's recalculation of royalty fees in accordance with this paragraph.

(3) *Identification of phonorecords in annual statements.* The information required by this paragraph shall include, and if necessary shall be broken down to identify separately, the following:

(i) The title of the nondramatic musical work subject to compulsory license.

(ii) A reference number or code identifying the relevant Notice of Intention, if the compulsory licensee chose to include such a number or code on its relevant Notice of Intention for the compulsory license.

(iii) The International Standard Recording Code (ISRC) associated with the relevant sound recording, if known; and at least one of the following, as applicable and available for tracking sales and/or usage:

(A) The catalog number or numbers and label name or names, used on or associated with the phonorecords;

(B) The Universal Product Code (UPC) or similar code used on or associated with the phonorecords; or

(C) The sound recording identification number assigned by the compulsory licensee or a third-party distributor to the relevant sound recording;

(iv) The names of the principal recording artist or group engaged in rendering the performances fixed on the phonorecords.

(v) The playing time of the relevant sound recording, except that playing time is not required in the case of ringtones or licensed activity to which no overtime adjustment is applicable.

(vi) If the compulsory licensee chooses to allocate its payments between coowners of the copyright in the nondramatic musical work as described in paragraph (g)(1) of § 210.6, and thus pays the copyright owner (or agent) receiving the statement less than one hundred percent of the applicable royalty, the percentage share paid.

(vii) The names for the writer or writers of the nondramatic musical work, or the International Standard Name Identifiers (ISNIs) or other unique identifier of the writer or writers, if known.

(viii) The International Standard Work Code (ISWC) or other unique identifier for the nondramatic musical work, if known.

(ix) Identification of the relevant phonorecord configuration (for example: compact disc, permanent digital download, ringtone) or offering (for example: limited download, music bundle) for which the royalty was calculated, including, if applicable and except for physical phonorecords, the name of the third-party distributor of the configuration or offering.

(e) *Clear statement.* The information required by paragraph (c) of this section requires intelligible, legible, and unambiguous statements in the Annual Statement of Account without incorporation by reference of facts or information contained in other documents or records.

(f) *Certification.* (1) Each Annual Statement of Account shall be accompanied by:

(i) The printed or typewritten name of the person who is signing the Annual Statement of Account on behalf of the compulsory licensee.

(ii) A signature, which in the case of a compulsory licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature.

(iv) If the compulsory licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person signing the Annual Statement of Account.

(v) The following statement: I am duly authorized to sign this Annual Statement of Account on behalf of the compulsory licensee.

(2) Each Annual Statement of Account shall also be certified by a licensed Certified Public Accountant. Such certification shall comply with the following requirements:

(i) Except as provided in paragraph (f)(2)(ii) of this section, the accountant shall certify that it has conducted an examination of the Annual Statement of Account prepared by the compulsory licensee in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and has rendered an opinion based on such examination that the Annual Statement conforms with the standards in paragraph (f)(2)(iv) of this section.

(ii) If such accountant determines in its professional judgment that the volume of data attributable to a particular compulsory licensee renders it impracticable to certify the Annual Statement of Account as required by paragraph (f)(2)(i) of this section, the accountant may instead certify the following:

(A) That the accountant has conducted an examination in accordance with the attestation standards established by the American Institute of Certified Public Accountants of the following assertions by the compulsory licensee's management:

(*1*) That the processes used by or on behalf of the compulsory licensee, including calculation of statutory royalties, generated Annual Statements that conform with the standards in paragraph (f)(2)(iv) of this section; and

(*2*) That the internal controls relevant to the processes used by or on behalf of the compulsory licensee to generate Annual Statements were suitably designed and operated effectively during the period covered by the Annual Statements.

(B) That such examination included examining, either on a test basis or otherwise as the accountant considered necessary under the circumstances and in its professional judgment, evidence supporting the management assertions in paragraph (f)(2)(ii)(A) of this section, including data relevant to the calculation of statutory royalties, and performing such other procedures as the accountant considered necessary in the circumstances.

(C) That the accountant has rendered an opinion based on such examination that the processes used to generate the Annual Statement were designed and operated effectively to generate Annual Statements that conform with the standards in paragraph (f)(2)(iv) of this section, and that the internal controls relevant to the processes used to generate Annual Statements were suitably designed and operated effectively during the period covered by the Annual Statements.

(iii) In the event a third party or third parties acting on behalf of the compulsory licensee provided services related to the Annual Statement, the accountant making a certification under either paragraph (f)(2)(i) or paragraph (f)(2)(ii) of this section may, as the accountant considers necessary under the circumstances and in its professional judgment, rely on a report and opinion rendered by a licensed Certified Public Accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants that the processes and/or internal controls of

the third party or third parties relevant to the generation of the compulsory licensee's Annual Statements were suitably designed and operated effectively during the period covered by the Annual Statements, if such reliance is disclosed in the certification.

(iv) An Annual Statement of Account conforms with the standards of this paragraph if it presents fairly, in all material respects, the compulsory licensee's usage of the copyright owner's musical works under compulsory license during the period covered by the Annual Statement, the statutory royalties applicable thereto, and such other data as are relevant to the calculation of statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(v) Each 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.

(3) If the Annual Statement of Account is served by mail or by reputable courier service, the Annual Statement of Account shall be signed by handwritten signature. If the Annual Statement of Account is served electronically, the Annual Statement of Account shall be signed by electronic signature as defined in section 7006(5) of title 15 of the United States Code.

(4) If the Annual Statement of Account is served electronically, the compulsory licensee may serve an electronic facsimile of the original certification of the Annual Statement of Account signed by the licensed Certified Public Accountant. The compulsory licensee shall retain the original certification of the Annual Statement of Account signed by the licensed Certified Public Accountant for the period identified in §210.8, which shall be made available to the copyright owner upon demand.

(g) *Service.* (1) The service of an Annual Statement of Account on a copyright owner under this subpart may be accomplished by means of service on either the copyright owner or an agent of the copyright owner with authority to receive Statements of Account on behalf of the copyright owner. In the case where the work has more than one copyright owner, the service of the Statement of Account on one co-owner or upon an agent of one of the co-owners shall be sufficient with respect to all co-owners. Each Annual Statement of Account shall be served on the copyright owner or the agent to whom or which it is directed by mail, by reputable courier service, or by electronic delivery as set forth in paragraph (g)(2) of this section on or before the 20th day of the sixth 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 §210.6(g).

(2) If an Annual Statement of Account is being sent electronically, it may be sent or made available to a copyright owner or its agent in a readily accessible electronic format consistent with prevailing industry practices applicable to comparable electronic delivery of comparable financial information.

(3) If the copyright owner or agent has made a request pursuant to §210.6(g)(3) to receive statements in electronic or paper form, such request shall also apply to Annual Statements to be rendered on or after the date that the request is effective with respect to Monthly Statements.

(4) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (c)(6) of this section (*i.e.*, the total royalty payable) is greater than the amount stated in that Annual Statement under paragraph (c)(7) of this section (*i.e.*, the total sum paid), the difference between such amounts shall also be served on or before the 20th day of the sixth month following the end of the fiscal year covered by the Annual Statement. The Annual Statement and payment may be sent together or separately, but if sent separately, the payment must include information reasonably sufficient to allow the payee to match the Annual Statement and the

payment. 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. In any case where the amount required to be stated in the Annual Statement of Account under paragraph (c)(6) of this section is less than the amount stated in that Annual Statement under paragraph (c)(7) of this section, the difference between such amounts shall be available to the compulsory licensee as a credit.

(5)(i) In any case where an Annual Statement of Account is sent by mail or by reputable courier service and is returned to the sender because the copyright owner or agent is no longer located at that address or has refused to accept delivery, or the Annual Statement of Account is sent by electronic mail and is undeliverable, 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 or attempted delivery by courier service or electronic mail, may be filed in the Licensing Section 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.

(ii) The Copyright Office will not accept any royalty fees submitted with Annual Statements of Account under paragraph (g)(5)(i) of this section.

(iii) 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.

(iv) No filing fee will be required in the case of Annual Statements of Account submitted to the Copyright Office under paragraph (g)(5)(i) of this section. Upon request and payment of the fee specified in §201.3(e) of this chapter, a Certificate of Filing will be provided to the sender.

(6) If an Annual Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If an Annual Statement of Account is sent by a reputable courier, documentation from the courier showing the first date of attempted delivery shall be sufficient to prove that service was timely. If an Annual Statement of Account or a link thereto is sent by electronic mail, a return receipt shall be sufficient to prove that service was timely. In the absence of the foregoing, the compulsory licensee shall bear the burden of proving that the Annual Statement of Account was served in a timely manner.

(h) *Annual Statements for periods before the effective date of this regulation.* If a copyright owner did not receive an Annual Statement of Account from a compulsory licensee for any fiscal year ending after March 1, 2009 and before November 17, 2014, the copyright owner may, at any time before May 17, 2015, make a request in writing to that compulsory licensee requesting an Annual Statement of Account for the relevant fiscal year conforming to the requirements of this section. If such a request is made, the compulsory licensee shall provide the Annual Statement of Account within six months after receiving the request. If such a circumstance and request applies to more than one of the compulsory licensee's fiscal years, such years may be combined on a single statement.

[79 FR 56206, Sept. 18, 2014, as amended at 79 FR 60978, Oct. 9, 2014; 82 FR 9365, Feb. 6, 2017; 84 FR 10686, Mar. 22, 2019. Redesignated at 85 FR 58143, Sept. 17, 2020; 86 FR 32643, June 22, 2021]

§ 210.8 Documentation.

All compulsory licensees shall, for a period of at least five years from the date of service of an Annual Statement of Account or Amended 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 or Amended Annual Statement and in Monthly Statements served during the fiscal year covered by such Annual Statement or Amended Annual Statement.

[79 FR 56206, Sept. 18, 2014. Redesignated at 85 FR 58143, Sept. 17, 2020]

§ 210.9 Harmless errors.

Errors in a Monthly or Annual Statement of Account that do not materially prejudice the rights of the copyright owner shall be deemed harmless, and shall not render that statement of account invalid or provide a basis for the exercise of the remedies set forth in 17 U.S.C. 115(c)(2)(J).

[79 FR 56206, Sept. 18, 2014, as amended at 83 FR 63065, Dec. 7, 2018. Redesignated at 85 FR 58143, Sept. 17, 2020]

§ 210.10 Statements required for limitation on liability for digital music providers for the transition period prior to the license availability date.

This section specifies the requirements for a digital music provider to report and pay royalties for purposes of being eligible for the limitation on liability described in 17 U.S.C. 115(d)(10). Terms used in this section that are defined in 17 U.S.C. 115(e) shall have the meaning given those terms in 17 U.S.C. 115(e).

(a) If the required matching efforts are successful in identifying and locating a copyright owner of a musical work (or share thereof) by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall provide statements of account and pay royalties to such copyright owner as a compulsory licensee in accordance with this subpart.

(b) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

(1) Accrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles, including those concerning derecognition of liabilities.

(2) If a copyright owner of an unmatched musical work (or share thereof) is identified and located by or to the digital music provider before the license availability date, the digital music provider shall, unless a voluntary license or other relevant agreement entered into prior to the time period specified in paragraph (b)(2)(i) of this section applies to such musical work (or share thereof)—

(i) Not later than 45 calendar days after the end of the calendar month during which the copyright owner was identified and located, pay the copyright owner all accrued royalties, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been providing Monthly Statements of Account as a compulsory licensee in accordance with this subpart to the copyright owner from initial use of the work, and including, in addition to the information and certification required by § 210.6, a clear identification of the total period covered by the cumulative statement and the total royalty payable for the period;

(ii) Beginning with the accounting period following the calendar month in which the copyright owner was identified and located, and for all other accounting periods prior to the license availability date, provide Monthly Statements of Account and pay royalties to the copyright owner as a compulsory licensee in accordance with this subpart; and

(iii) Beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such reporting period and reporting periods thereafter to the mechanical licensing collective, as required under 17 U.S.C. 115(d) and applicable regulations.

(3) If a copyright owner of an unmatched musical work (or share thereof) is not identified and located by the license availability date, the digital music provider shall—

(i) Not later than 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing collective (as required by paragraph (i)(2) of this section and subject to paragraphs (c)(5) and (k) of this section), such payment

to be accompanied by a cumulative statement of account that:

(A) Includes all of the information required by paragraphs (c) through (e) of this section covering the period starting from initial use of the work;

(B) Is delivered to the mechanical licensing collective as required by paragraph (i)(1) of this section; and

(C) Is certified as required by paragraph (j) of this section; and

(ii) Beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under 17 U.S.C. 115(d) and applicable regulations.

(c) Each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be clearly and prominently identified as a ''Cumulative Statement of Account for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (months and years) covered by the cumulative statement of account.

(2) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s) (including as may be defined in part 385 of this title), through which the digital music provider engages, or has engaged at any time during the period identified in paragraph (c)(1) of this section, in covered activities. If the digital music provider has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. 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.

(4) For each sound recording embodying a musical work that is used by the digital music provider in covered activities during the period identified in paragraph (c)(1) of this section and for which a copyright owner of such musical work (or share thereof) is not identified and located by the license availability date, a detailed cumulative statement, from which the mechanical licensing collective may separate reported information for each month and year for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) The total accrued royalty payable by the digital music provider for the period identified in paragraph (c)(1) of this section, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total accrued royalty payable broken down by month and year and by each applicable activity or offering including as may be defined in part 385 of this title.

(i) Where a digital music provider has a reasonable good-faith belief that the total accrued royalties payable are less than the total of the amounts reported under paragraph (c)(4)(i) of this section, and the precise amount of such accrued royalties cannot be calculated at the time the cumulative statement of account is delivered to the mechanical licensing collective because of the unmatched status of relevant musical works embodied in sound recordings reported under paragraph (c)(4)(ii) of this section, the total accrued royalties reported and transferred may make use of reasonable estimations, determined in accordance with GAAP and broken down by month and year and by each applicable activity or offering including as may be defined in part 385 of this title. Any such estimate shall be made in good faith and on the basis of the best knowledge, information, and belief of the digital music provider at the time the cumulative statement of account is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section. In no case shall the failure to match a musical work by the license

availability date be construed as prohibiting or limiting a digital music provider's entitlement to use such an estimate if the digital music provider has satisfied its obligations under 17 U.S.C. 115(d)(10)(B) to engage in required matching efforts.

(ii) A digital music provider reporting and transferring accrued royalties that make use of reasonable estimations must provide a description of any voluntary license or other agreement containing an appropriate release of royalty claims relied upon by the digital music provider in making its estimation that is sufficient for the mechanical licensing collective to engage in efforts to confirm uses of musical works subject to any such agreement. Such description shall be sufficient if it includes at least the following information:

(A) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, relevant to any such agreement. If such an agreement pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(B) The start and end dates of each covered period of time.

(C) Each applicable musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for each such musical work copyright owner or for an administrator or other representative who has entered into an applicable agreement on behalf of the relevant copyright owner.

(D) A satisfactory identification of any applicable catalog exclusions.

(E) At the digital music provider's option, and in lieu of providing the information listed in paragraph (c)(5)(ii)(D) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(F) A unique identifier for each such agreement.

(iii)(A) After receiving the information required by paragraph (c)(5)(ii) of this section, the mechanical licensing collective shall, among any other actions required of it, engage in efforts to confirm uses of musical works embodied in sound recordings reported under paragraph (c)(4)(ii) of this section that are subject to any identified agreement, and shall promptly notify relevant copyright owners of the digital music provider's reliance on such identified agreement(s).

(B)(*1*) A notified copyright owner may dispute whether a digital music provider has appropriately relied upon an identified agreement by delivering a notice of dispute to the mechanical licensing collective no later than one year after being notified. A notice of dispute must describe the basis for the copyright owner's dispute with particularity and specify whether the copyright owner is disputing the digital music provider's reliance with respect to potential distributions based on matched usage or of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(J), or both. The notice must contain a certification by the copyright owner that its dispute is reasonable and made in good faith. The mechanical licensing collective shall promptly provide the digital music provider with a copy of any notice of dispute it receives. Nothing in this paragraph (c)(5)(iii)(B)(*1*) shall be construed as prejudicing a copyright owner's right or ability to otherwise dispute a digital music provider's reliance on an identified agreement outside of this process.

(*2*) If the mechanical licensing collective receives a notice of dispute from an appropriate copyright owner in compliance with paragraph (c)(5)(iii)(B)(*1*) of this section, then at or around the point in time that the mechanical licensing collective would otherwise make a particular distribution to that copyright owner but for the digital music provider's reliance on the disputed agreement, the mechanical licensing collective shall deliver an invoice and/or response file to the digital music provider consistent with paragraph (h) of this section that includes the amount that would otherwise be distributed at that time (which shall include the interest that would have accrued on such amount had it been held by the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(3)(H)(ii) from the original date of transfer) and an explanation of how

that amount was determined. Depending on the scope of the notice of dispute, this may include distributions based on matched usage and/or distributions of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(J). In the case of the latter, the relevant approximate date to deliver the invoice and/or response file to the digital music provider shall be the date on which the mechanical licensing collective provides the notice required under 17 U.S.C. 115(d)(3)(J)(iii)(II)(dd). Where a copyright owner delivers a notice of dispute after the relevant point in time has passed for a particular distribution, the mechanical licensing collective shall deliver the invoice and/or response file to the digital music provider promptly after receiving the notice of dispute. No later than 14 business days after receipt of the invoice and/or response file, the digital music provider must pay the invoiced amount.

(*3*) All amounts delivered to the mechanical licensing collective by a digital music provider pursuant to paragraph (c)(5)(iii)(B)(*2*) of this section shall be held by the mechanical licensing collective pending resolution of the dispute, in accordance with 17 U.S.C. 115(d)(3)(H)(ii)(I) without regard for whether or not the funds are in fact accrued royalties. The mechanical licensing collective shall not make a distribution of the funds (or any part thereof), treat the funds (or any part thereof) as an overpayment, or otherwise release the funds (or any part thereof), unless directed to do so by mutual agreement of the relevant parties or by order of an adjudicative body with appropriate authority. If the mechanical licensing collective has not been so directed within one year after the funds have been received from the digital music provider, and if there is no active dispute resolution occurring at that time, the mechanical licensing collective shall treat the funds as an overpayment which shall be handled in accordance with paragraph (k)(5) of this section.

(C) The mechanical licensing collective shall presume that a digital music provider has appropriately relied upon an identified agreement, except with respect to a relevant copyright owner who has delivered a valid notice of dispute for such agreement pursuant to paragraph (c)(5)(iii)(B)(*1*) of this section. Notwithstanding the preceding sentence, any resolution of a dispute shall be reflected in the mechanical licensing collective's ongoing administration activities.

(iv)(A) Subject to paragraph (c)(5)(iii) of this section, if the amount transferred to the mechanical licensing collective by a digital music provider with its cumulative statement of account is insufficient to cover any required distributions to copyright owners, the mechanical licensing collective shall deliver an invoice and/or response file to the digital music provider consistent with paragraph (h) of this section that includes the amount outstanding (which shall include the interest that would have accrued on such amount had it been held by the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(3)(H)(ii) from the original date of transfer) and the basis for the mechanical licensing collective's conclusion that such amount is due. No later than 14 business days after receipt of such notice, the digital music provider must pay the invoiced amount.

(B) In the event a digital music provider is found by an adjudicative body with appropriate authority to have erroneously, but not unreasonably or in bad faith, withheld accrued royalties, the digital music provider may remain in compliance with this section for purposes of retaining its limitation on liability if the digital music provider has otherwise satisfied the requirements for the limitation on liability described in 17 U.S.C. 115(d)(10) and this section and if the additional amount due is paid in accordance with a relevant order.

(v) Any overpayment of royalties based upon an estimate permitted by paragraph (c)(5)(i) of this section shall be handled in accordance with paragraph (k)(5) of this section.

(vi) Any underpayment of royalties shall be remedied by a digital music provider without regard for the adjusted statute of limitations described in 17 U.S.C. 115(d)(10)(C). By using an estimate permitted by either paragraph (c)(5)(i) or (d)(2) of this section, a digital music provider agrees to waive

any statute-of-limitations-based defenses with respect to any asserted underpayment of royalties connected to the use of such an estimate.

(vii) Nothing in this section shall be construed as prejudicing a copyright owner's ability to challenge whether a digital music provider has satisfied the requirements for the limitation on liability.

(6) If the total accrued royalty reported under paragraph (c)(5) of this section does not reconcile with the royalties actually transferred to the mechanical licensing collective, or if the royalties reported employ an estimate as permitted under paragraph (c)(5)(i) of this section, a clear and detailed explanation of the difference and the basis for it.

(d) The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) A detailed and step-by-step accounting of the calculation of attributable royalties under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the digital music provider determined the royalty and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(2) Where computation of the attributable royalties depends on an input that is unable to be finally determined at the time the cumulative statement of account is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the digital music provider's control (*e.g.,* the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the digital music provider. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. A cumulative statement of account containing an estimate permitted by this paragraph (d)(2) should identify each input that has been estimated, and provide the reason(s) why such input(s) needed to be estimated and an explanation as to the basis for the estimate(s).

(3) All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the digital music provider at the time the cumulative statement of account is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e) For each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section, the digital music provider shall provide the information referenced in §210.6(c)(3) that would have been provided to the copyright owner had the digital music provider been serving Monthly Statements of Account as a compulsory licensee in accordance with this subpart on the copyright owner from initial use of the work, plus the unique identifier assigned by the digital music provider to the sound recording and a unique identifier assigned by the digital music provider to each individual usage line.

(f) The information required by paragraphs (c), (d), (e), (k), and (o) of this section requires intelligible, legible, and unambiguous statements in the cumulative statements of account, without incorporation of facts or information contained in other documents or records.

(g) References to part 385 of this title, as used in paragraphs (c), (d), and (k) of this section, refer to the rates and terms of royalty payments, including any defined activities or offerings, as in effect as to each particular reported use based on when the use occurred.

(h) If requested by a digital music provider, the mechanical licensing collective shall deliver an invoice and/or a response file to the digital music provider within a reasonable period of time after the cumulative statement of account and related royalties are received. The response file shall contain

such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators.

(i)(1) To the extent practicable, each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section, and each supplemental metadata report delivered to the mechanical licensing collective under paragraph (o) of this section, shall be delivered in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among digital music providers. The mechanical licensing collective must offer an option that is accessible to smaller digital music providers that may not be reasonably capable of complying with the requirements of a sophisticated reporting or data standard or format. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than one reporting or data standard or format. A digital music provider may use an alternative reporting or data standard or format pursuant to an agreement with the mechanical licensing collective under paragraph (l) of this section, consent to which shall not be unreasonably withheld by the mechanical licensing collective.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A cumulative statement of account and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the cumulative statement of account to the payment.

(j) Each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be accompanied by:

(1) The name of the person who is signing and certifying the cumulative statement of account.

(2) A signature, which in the case of a digital music provider that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the digital music provider is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the cumulative statement of account.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this cumulative statement of account on behalf of the digital music provider, (2) I have examined this cumulative statement of account, and (3) 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.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this cumulative statement of account on behalf of the digital music provider, (2) I have prepared or supervised the preparation of the data used by the digital music provider and/or its agent to generate this cumulative statement of account, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this cumulative statement of account was prepared by the digital music provider and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly statements that accurately reflect, in all material respects, the digital music provider's usage of musical works, the statutory royalties applicable thereto, and any

other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(6) A certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of 17 U.S.C. 115(d)(10)(B)(i) and (ii) but has not been successful in locating or identifying the copyright owner.

(k)(1) A digital music provider may adjust its previously delivered cumulative statement of account, including related royalty payments, by delivering to the mechanical licensing collective a statement of adjustment.

(2) A statement of adjustment shall be clearly and prominently identified as a ''Statement of Adjustment of a Cumulative Statement of Account.''

(3) A statement of adjustment shall include a clear statement of the following information:

(i) The previously delivered cumulative statement of account, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the previously delivered cumulative statement of account, including a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the digital music provider depends. Such description shall include the adjusted royalties payable and all information used to compute the adjusted royalties payable, in accordance with the requirements of this section and part 385 of this title, such that the mechanical licensing collective can provide a detailed and step-by-step accounting of the calculation of the adjustment under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the digital music provider determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the digital music provider shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the statement of adjustment or promptly after being notified by the mechanical licensing collective of the amount due. A statement of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the statement of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the digital music provider's account, or upon request, issue a refund within a reasonable period of time.

(6)(i) A statement of adjustment must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6)(ii) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same cumulative statement of account at different points in time, a separate 6-month period runs for each such triggering event. Where more than one scenario necessitates the same particular adjustment, the 6-month deadline to make the adjustment begins to run from the occurrence of the earliest triggering event.

(ii) A statement of adjustment may only be made:

(A) Except as otherwise provided for by paragraph (c)(5) of this section, where the digital music provider discovers, or is notified of by the mechanical licensing collective or a copyright owner, licensor, or author (or their respective representatives, including by an administrator or a collective management organization) of a relevant sound recording or musical work that is embodied in such a sound recording, an inaccuracy in the cumulative statement of account, or in the amounts of royalties owed, based on information that was not previously known to the

digital music provider despite its good-faith efforts;

(B) When making an adjustment to a previously estimated input under paragraph (d)(2) of this section;

(C) Following an audit of a digital music provider that concludes after the cumulative statement of account is delivered and that has the result of affecting the computation of the royalties payable by the digital music provider (*e.g.*, as applicable, an audit by a sound recording copyright owner concerning the amount of applicable consideration paid for sound recording copyright rights); or

(D) In response to a change in applicable rates or terms under part 385 of this title.

(E) To ensure consistency with any adjustments made in an Annual Statement of Account generated under § 210.7 for the most recent fiscal year.

(7) A statement of adjustment must be certified in the same manner as a cumulative statement of account under paragraph (j) of this section.

(l)(1) Subject to the provisions of 17 U.S.C. 115, a digital music provider and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties required to be transferred to the mechanical licensing collective for the digital music provider to be eligible for the limitation on liability described in 17 U.S.C. 115(d)(10). The procedures surrounding the certification requirements of paragraph (j) of this section may not be altered by agreement. This paragraph (l)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (l)(1) of this section that includes the name of the digital music provider (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the digital music provider engages, or has engaged at any time during the period identified in paragraph (c)(1) of this section, in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (l)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

(m) Each digital music provider shall, for a period of at least seven years from the date of delivery of a cumulative statement of account or statement of adjustment to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such statement (except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the statement containing the final adjustment of such input).

(n) Errors in a cumulative statement of account or statement of adjustment that do not materially prejudice the rights of the copyright owner shall be deemed harmless, and shall not render that statement invalid.

(o)(1) By June 15, 2021, the digital music provider must submit a supplemental metadata report that includes all of the information provided in the cumulative statement of account pursuant to paragraph (c) of this section, as well as, separately or together with such information, the following information for each sound recording embodying a musical work that was reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including, to the extent practicable, all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier assigned by the digital music provider, if any, including to the extent practicable, any code(s) that can be used to locate and listen to the sound recording through the digital music provider's public-facing service;

(D) Actual playing time measured from the sound recording audio file, where available; and

(E) To the extent acquired by the digital music provider in connection with its use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) International standard recording code(s) (ISRC);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) Universal product code(s) (UPC); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s); and

(*9*) Distributor(s).

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(A) Information concerning authorship of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s); and

(*2*) International standard name identifier(s) (ISNI) and interested parties information code(s) (IPI) for each such songwriter;

(B) International standard musical work code(s) (ISWC) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii)(A) For each track for which a share of a musical work has been matched and for which accrued royalties for such share have been paid, but for which one or more shares of the musical work remains unmatched and unpaid, the digital music provider must provide, for each usage line for such track, a reference to the specific unique identifier for the usage line reported under paragraph (e) of this section, and a clear identification of the percentage share(s) that have been matched and paid and the owner(s) of such matched and paid share(s) (including any unique party identifiers for such owner(s) that are known by the digital music provider).

(B) If, for a particular track, a digital music provider cannot provide a clear identification of the percentage share(s) that have been matched and paid and the owner(s) of such share(s) because this information is subject to a contractual confidentiality restriction or the conditions of paragraph (o)(1)(iii)(C) of this section apply with respect to such information, the digital music provider must provide alternate information for the track, namely, a clear identification of the total aggregate percentage share that has been matched and paid and the owner(s) of the aggregate matched and paid share (including any unique party identifiers for such owner(s) that are known by the digital music provider). If the digital music provider still cannot provide such alternate information because of the conditions of paragraph (o)(1)(iii)(C) of this section, the information required by this paragraph (o)(1)(iii)(B) may be omitted for the track from the supplemental metadata report. A digital music provider reporting under this paragraph (o)(1)(iii)(B)

must deliver a certification to the mechanical licensing collective stating that the conditions of being permitted to report under this paragraph (o)(1)(iii)(B) apply with respect to the provision of alternate information or omission of percentage share(s) information entirely, as specified in the certification.

(C) The conditions referred to in paragraph (o)(1)(iii)(B) of this section are:

(*1*) The information is maintained only by a third-party vendor;

(*2*) The digital music provider does not have any contractual or other rights to access the information;

(*3*) The digital music provider is unable to compile the information from records in its possession using commercially reasonable efforts within the required reporting timeframe; and

(*4*) The vendor refuses to make the information available to the digital music provider on commercially reasonable terms.

(2) Any obligation under paragraph (o)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the digital music provider by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a digital music provider acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information must be reported to the extent practicable.

(3) As used in this paragraph (o), it is practicable to provide the enumerated information if:

(i) It belongs to a category of information expressly required to be reported by the enumerated list of information contained in § 210.6(c)(3);

(ii) It belongs to a category of information that has been reported, or is required to be reported, by the particular digital music provider to the mechanical licensing collective under the blanket license; or

(iii) It belongs to a category of information that is reported by the particular digital music provider to the mechanical licensing collective under a voluntary license or individual download license.

(4) The supplemental metadata report provided for in this paragraph (o) is not a condition for eligibility for the limitation on liability in 17 U.S.C. 115(d)(10), or a condition of the blanket license.

[83 FR 63065, Dec. 7, 2018. Redesignated at 85 FR 58143, Sept. 17, 2020. Amended at 86 FR 2203, Jan. 11, 2021; 86 FR 7653, Feb. 1, 2021]

§ 210.11 Record companies using individual download licenses.

A record company that obtains an individual download license under 17 U.S.C. 115(b)(3) shall provide statements of account and pay royalties as a compulsory licensee in accordance with this subpart.

[83 FR 63065, Dec. 7, 2018. Redesignated at 85 FR 58143, Sept. 17, 2020]

§ 210.12–210.20 [Reserved]

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

SOURCE: 85 FR 58143, Sept. 17, 2020, unless otherwise noted.

§ 210.21 General.

This subpart prescribes rules for the compulsory blanket license to make and distribute digital phonorecord deliveries of nondramatic musical works pursuant to 17 U.S.C. 115(d), including rules for digital music providers, significant nonblanket licensees, the mechanical licensing collective, and the digital licensee coordinator.

§ 210.22 Definitions.

For purposes of this subpart:

(a) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 115(e).

(b) The term *blanket licensee* means a digital music provider operating under a blanket license.

(c) The term *DDEX* means Digital Data Exchange, LLC.

(d) The term *GAAP* means U.S. Generally Accepted Accounting Principles,

except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this section.

(e) The term *IPI* means interested parties information code.

(f) The term *ISNI* means international standard name identifier.

(g) The term *ISRC* means international standard recording code.

(h) The term *ISWC* means international standard musical work code.

(i) The term *producer* means the primary person(s) contracted by and accountable to the content owner for the task of delivering the sound recording as a finished product.

(j) The term *UPC* means universal product code.

§ 210.23 Designation of the mechanical licensing collective and digital licensee coordinator.

The following entities are designated pursuant to 17 U.S.C. 115(d)(3)(B) and (d)(5)(B). Additional information regarding these entities is available on the Copyright Office's website.

(a) Mechanical Licensing Collective, incorporated in Delaware on March 5, 2019, is designated as the mechanical licensing collective; and

(b) Digital Licensee Coordinator, Inc., incorporated in Delaware on March 20, 2019, is designated as the digital licensee coordinator.

§ 210.24 Notices of blanket license.

(a) *General.* This section prescribes rules under which a digital music provider completes and submits a notice of license to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(2)(A) for purposes of obtaining a statutory blanket license.

(b) *Form and content.* A notice of license shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the digital music provider is engaging, or seeks to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. 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) A telephone number and email address for the digital music provider where an individual responsible for managing the blanket license can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the digital music provider's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the digital music provider's eligibility for a blanket license and to provide reasonable notice to the mechanical licensing collective, copyright owners, and songwriters of the manner in which the digital music provider is engaging, or seeks to engage, in any covered activity pursuant to the blanket license. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the digital music provider has a good-faith belief, informed by review of relevant law and regulations, that it:

(A) Satisfies all requirements to be eligible for a blanket license, including that it satisfies the eligibility criteria to be considered a digital music provider pursuant to 17 U.S.C. 115(e)(8); and

(B) Is, or will be before the date of initial use of musical works pursuant to the blanket license, able to comply with all payments, terms, and responsibilities associated with the blanket license.

(ii) A statement that where the digital music provider seeks or expects to engage in any activity identified in its notice of license, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the digital music provider's service(s), or expected service(s), and the manner in which it uses, or seeks to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the digital music provider is, or seeks to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the digital music provider offers, or seeks to offer, as part of its covered activities (the digital music provider may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Services available through discounted pricing plans, such as for families or students.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the digital music provider wishes to provide.

(6) The date, or expected date, of initial use of musical works pursuant to the blanket license.

(7) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(8) A description of any applicable voluntary license the digital music provider is, or expects to be, operating under concurrently with the blanket license that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). This description should be provided as an addendum to the rest of the notice of license to help preserve any confidentiality to which it may be entitled. This paragraph (b)(8) does not apply to any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. With respect to any applicable voluntary license executed and in effect before March 31, 2021, the description required by this paragraph (b)(8) must be delivered to the mechanical licensing collective either no later than 10 business days after such license is executed, or at least 90 calendar days before delivering a report of usage covering the first reporting period during which such license is in effect, whichever is later. For any reporting period ending on or before March 31, 2021, the mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license for which the collective has not received the description required by this paragraph (b)(8) at least 90 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods. The rest of the notice of license may be delivered separately from such description. The description required by this paragraph (b)(8) shall be sufficient if it includes at least the following information:

(i) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, through which musical works are, or are expected to be, used pursuant to any such voluntary license. If such a license pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(ii) The start and end dates.

(iii) The musical work copyright owner, identified by name and any

known and appropriate unique identifiers, and appropriate contact information for the musical work copyright owner or for an administrator or other representative who has entered into an applicable license on behalf of the relevant copyright owner.

(iv) A satisfactory identification of any applicable catalog exclusions.

(v) At the digital music provider's option, and in lieu of providing the information listed in paragraph (b)(8)(iv) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(vi) A unique identifier for each such license.

(9) A description of the extent to which the digital music provider is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. Such description may indicate that such authority exists for all permanent downloads. Otherwise, such description shall include a list of all sound recordings for which the digital music provider has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the digital music provider indicates that such authority otherwise exists for all permanent downloads. Such description shall also include an identification of the digital music provider's covered activities operated under such authority.

(c) *Certification and signature.* The notice of license shall be signed by an appropriate duly authorized officer or representative of the digital music provider. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of license to the mechanical licensing collective on behalf of the digital music provider and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Except as provided by 17 U.S.C. 115(d)(9)(A), to obtain a blanket license, a digital music provider must submit a notice of license to the mechanical licensing collective. Notices of license shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of license. Upon submitting a notice of license to the mechanical licensing collective, a digital music provider shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt. The mechanical licensing collective shall send any rejection of a notice of license to both the street address and email address provided in the notice.

(e) *Harmless errors.* Errors in the submission or content of a notice of license, including the failure to timely submit an amended notice of license, that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective to reject a notice or terminate a blanket license. This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A digital music provider may submit an amended notice of license to cure any deficiency in a rejected notice pursuant to 17 U.S.C. 115(d)(2)(A). A digital music provider operating under a blanket license must submit a new notice of license within 45 calendar days after any of the information required by paragraphs (b)(1) through (6) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of license submitted by a digital music provider. Where the information required by paragraph (b)(8) of this section has changed, instead of

submitting an amended notice of license, the digital music provider must promptly deliver updated information to the mechanical licensing collective in an alternative manner reasonably determined by the collective. To the extent commercially reasonable, the digital music provider must deliver such updated information either no later than 10 business days after such license is executed, or at least 30 calendar days before delivering a report of usage covering the first reporting period during which such license is in effect, whichever is later. Except as otherwise provided for by paragraph (b)(8) of this section, the mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license for which the collective has not received the description required by paragraph (b)(8) of this section at least 30 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods.

(g) *Transition to blanket licenses.* Where a digital music provider obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and seeks to continue operating under the blanket license, a notice of license must be submitted to the mechanical licensing collective within 45 calendar days after the license availability date and the mechanical licensing collective shall begin accepting such notices at least 30 calendar days before the license availability date, provided, however, that any description required by paragraph (b)(8) of this section must be delivered within the time period described in paragraph (b)(8). In such cases, the blanket license shall be effective as of the license availability date, rather than the date on which the notice is submitted to the collective. Failure to comply with this paragraph (g), including by failing to timely submit the required notice or cure a rejected notice, shall not affect an applicable digital music provider's blanket license, except that such blanket license may become subject to default and termination under 17 U.S.C. 115(d)(4)(E). The mechanical licensing collective shall not take any action pursuant to 17 U.S.C. 115(d)(4)(E) before the conclusion of any proceedings under 17 U.S.C. 115(d)(2)(A)(iv) or (v), provided that the digital music provider meets the blanket license's other required terms and conditions.

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a digital music provider that is not required by this section, which the digital music provider may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all blanket licenses that, subject to any confidentiality to which they may be entitled, includes:

(1) All information contained in each notice of license, including amended and rejected notices;

(2) Contact information for all blanket licensees;

(3) The effective dates of all blanket licenses;

(4) For any amended or rejected notice, a clear indication of its amended or rejected status and its relationship to other relevant notices;

(5) For any rejected notice, the collective's reason(s) for rejecting it; and

(6) For any terminated blanket license, a clear indication of its terminated status, the date of termination, and the collective's reason(s) for terminating it.

[85 FR 58143, Sept. 17, 2020, as amended at 86 FR 12826, Mar. 5, 2021]

§ 210.25 Notices of nonblanket activity.

(a) *General.* This section prescribes rules under which a significant nonblanket licensee completes and submits a notice of nonblanket activity to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(b) *Form and content.* A notice of nonblanket activity shall be prepared in

accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. 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) A telephone number and email address for the significant nonblanket licensee where an individual responsible for managing licenses associated with covered activities can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the significant nonblanket licensee's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the licensee's qualifications as a significant nonblanket licensee and to provide reasonable notice to the mechanical licensing collective, digital licensee coordinator, copyright owners, and songwriters of the manner in which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the significant nonblanket licensee has a good-faith belief, informed by review of relevant law and regulations, that it satisfies all requirements to qualify as a significant nonblanket licensee under 17 U.S.C. 115(e)(31).

(ii) A statement that where the significant nonblanket licensee expects to engage in any activity identified in its notice of nonblanket activity, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the significant nonblanket licensee's service(s), or expected service(s), and the manner in which it uses, or expects to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the significant nonblanket licensee is, or expects to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the significant nonblanket licensee offers, or expects to offer, as part of its covered activities (the significant nonblanket licensee may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Services available through discounted pricing plans, such as for families or students.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the significant nonblanket licensee wishes to provide.

(6) Acknowledgement of whether the significant nonblanket licensee is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. Where such authority does not cover all permanent downloads made available on the service, the significant nonblanket licensee shall maintain with the mechanical licensing collective a list of all sound recordings for which it has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the significant nonblanket licensee indicates that such authority

otherwise exists for all permanent downloads.

(7) The date of initial use of musical works pursuant to any covered activity.

(8) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(c) *Certification and signature.* The notice of nonblanket activity shall be signed by an appropriate duly authorized officer or representative of the significant nonblanket licensee. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of nonblanket activity to the mechanical licensing collective on behalf of the significant nonblanket licensee and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Notices of nonblanket activity shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of nonblanket activity. Upon submitting a notice of nonblanket activity to the mechanical licensing collective, a significant nonblanket licensee shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt.

(e) *Harmless errors.* Errors in the submission or content of a notice of nonblanket activity, including the failure to timely submit an amended notice of nonblanket activity, that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A significant nonblanket licensee must submit a new notice of nonblanket activity with its report of usage that is next due after any of the information required by paragraphs (b)(1) through (7) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of nonblanket activity submitted by a significant nonblanket licensee.

(g) *Transition to blanket licenses.* Where a digital music provider that would otherwise qualify as a significant nonblanket licensee obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and does not seek to operate under the blanket license, if such licensee submits a valid notice of nonblanket activity within 45 calendar days after the license availability date in accordance with 17 U.S.C. 115(d)(6)(A)(i), such licensee shall not be considered to have ever operated under the statutory blanket license until such time as the licensee submits a valid notice of license pursuant to 17 U.S.C. 115(d)(2)(A).

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a significant nonblanket licensee that is not required by this section, which the significant nonblanket licensee may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all significant nonblanket licensees that, subject to any confidentiality to which they may be entitled, includes:

(1) All information contained in each notice of nonblanket activity, including amended notices;

(2) Contact information for all significant nonblanket licensees;

(3) The date of receipt of each notice of nonblanket activity; and

(4) For any amended notice, a clear indication of its amended status and its relationship to other relevant notices.

[85 FR 58143, Sept. 17, 2020, as amended at 86 FR 12826, Mar. 5, 2021]

§ 210.26 Data collection and delivery efforts by digital music providers and musical work copyright owners.

(a) *General.* This section prescribes rules under which digital music providers and musical work copyright owners shall engage in efforts to collect and provide information to the mechanical licensing collective that may assist the collective in matching musical works to sound recordings embodying those works and identifying and locating the copyright owners of those works.

(b) *Digital music providers.* (1)(i) Pursuant to 17 U.S.C. 115(d)(4)(B), in addition to obtaining sound recording names and featured artists and providing them in reports of usage, a digital music provider operating under a blanket license shall engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service(s) of such digital music provider the information belonging to the categories identified in § 210.27(e)(1)(i)(E) and (e)(1)(ii), without regard to any limitations that may apply to the reporting of such information in reports of usage. Such efforts must be undertaken periodically, and be specific and targeted to obtaining information not previously obtained from the applicable owner or other licensor for the specific sound recordings and musical works embodied therein for which the digital music provider lacks such information. Such efforts must also solicit updates for any previously obtained information if reasonably requested by the mechanical licensing collective. The digital music provider shall keep the mechanical licensing collective reasonably informed of the efforts it undertakes pursuant to this section.

(ii) Any information required by paragraph (b)(1)(i) of this section, including any updates to such information, provided to the digital music provider by sound recording copyright owners or other licensors of sound recordings (or their representatives) shall be delivered to the mechanical licensing collective in reports of usage in accordance with § 210.27(e).

(2)(i) Notwithstanding paragraph (b)(1) of this section, a digital music provider may satisfy its obligations under 17 U.S.C. 115(d)(4)(B) with respect to a particular sound recording by arranging, or collectively arranging with others, for the mechanical licensing collective to receive the information required by paragraph (b)(1)(i) of this section from an authoritative source of sound recording information, such as the collective designated by the Copyright Royalty Judges to collect and distribute royalties under the statutory licenses established in 17 U.S.C. 112 and 114, provided that:

(A) Such arrangement requires such source to inform, including through periodic updates, the digital music provider and mechanical licensing collective about any relevant gaps in its repertoire coverage known to such source, including but not limited to particular categories of information identified in § 210.27(e)(1)(i)(E) and (e)(1)(ii), sound recording copyright owners and/or other licensors of sound recordings (*e.g.*, labels, distributors), genres, and/or countries of origin, that are either not covered or materially underrepresented as compared to overall market representation; and

(B) Such digital music provider does not have actual knowledge or has not been notified by the source, the mechanical licensing collective, or a copyright owner, licensor, or author (or their respective representatives, including by an administrator or a collective management organization) of the relevant sound recording or musical work that is embodied in such sound recording, that the source lacks such information for the relevant sound recording or a set of sound recordings encompassing such sound recording.

(ii) Satisfying the requirements of 17 U.S.C. 115(d)(4)(B) in the manner set

out in paragraph (b)(2)(i) of this section does not excuse a digital music provider from having to report sound recording and musical work information in accordance with § 210.27(e).

(3) The requirements of paragraph (b) of this section are without prejudice to what a court of competent jurisdiction may determine constitutes good-faith, commercially reasonable efforts for purposes of eligibility for the limitation on liability described in 17 U.S.C. 115(d)(10).

(c) *Musical work copyright owners.* (1) Pursuant to 17 U.S.C. 115(d)(3)(E)(iv), each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, by providing, to the extent a musical work copyright owner becomes aware that such information is not then available in the database and to the extent the musical work copyright owner has such missing information, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.

(2) As used in paragraph (c)(1) of this section, ''information regarding the names of the sound recordings'' shall include, for each applicable sound recording:

(i) Sound recording name(s), including any alternative or parenthetical titles for the sound recording;

(ii) Featured artist(s); and

(iii) ISRC(s).

§ 210.27 Reports of usage and payment for blanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage and payment of royalties for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a digital music provider operating under a blanket license pursuant to 17 U.S.C. 115(d). A blanket licensee shall report and pay royalties to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(c)(2)(I), 17 U.S.C. 115(d)(4)(A), and this section. A blanket licensee shall also report to the mechanical licensing collective on an annual basis in accordance with 17 U.S.C. 115(c)(2)(I) and this section. A blanket licensee may make adjustments to its reports of usage and royalty payments in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage*, unless otherwise specified, refers to all reports of usage required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by significant nonblanket licensees under 17 U.S.C. 115(d)(6)(A)(ii) and § 210.28.

(2) A *monthly report of usage* is a report of usage accompanying monthly royalty payments identified in 17 U.S.C. 115(c)(2)(I) and 17 U.S.C. 115(d)(4)(A), and required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license.

(3) An *annual report of usage* is a statement of account identified in 17 U.S.C. 115(c)(2)(I), and required to be delivered by a blanket licensee annually to the mechanical licensing collective under the blanket license.

(4) A *report of adjustment* is a report delivered by a blanket licensee to the mechanical licensing collective under the blanket license adjusting one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a ''Monthly Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If

the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. 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.

(4) For each sound recording embodying a musical work that is used by the blanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5)(i) For any voluntary license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. This paragraph (c)(5)(i) does not apply to any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license.

(ii) For any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license, and where such authority does not cover all permanent downloads made available on the service, a list of all sound recordings for which the digital music provider has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the digital music provider indicates that such authority otherwise exists for all permanent downloads, and an identification of the digital music provider's covered activities operated under such authority. If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(6) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section:

(i) The total royalty payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total royalty payable broken down by each applicable activity or offering including as may be defined in part 385 of this title; and

(ii) The amount of late fees, if applicable, included in the payment associated with the monthly report of usage.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) *Calculations.* (i) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported

sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(ii) Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of such royalties under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(2) *Estimates.* (i) Where computation of the royalties payable by the blanket licensee under the blanket license depends on an input that is unable to be finally determined at the time the report of usage is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the blanket licensee's control (*e.g.*, as applicable, the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the blanket licensee. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. A report of usage containing an estimate permitted by this paragraph (d)(2)(i) should identify each input that has been estimated, and provide the reason(s) why such input(s) needed to be estimated and an explanation as to the basis for the estimate(s).

(ii) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, and the blanket licensee is dependent upon the mechanical licensing collective to confirm usage subject to applicable voluntary licenses and individual download licenses, the blanket licensee shall compute the royalties payable by the blanket licensee under the blanket license using a reasonable estimation of the amount of payment for such non-blanket usage to be deducted from royalties that would otherwise be due under the blanket license, determined in accordance with GAAP. Royalty payments based on such estimates shall be adjusted within 5 calendar days after the mechanical licensing collective confirms such amount to be deducted and notifies the blanket licensee under paragraph (g)(2) of this section. Any overpayment of royalties shall be handled in accordance with paragraph (k)(5) of this section. Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the blanket licensee shall not provide an estimate of or deduct such amount in the information delivered to the mechanical licensing collective under paragraph (d)(1)(ii) of this section.

(3) *Good faith.* All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the blanket licensee at the time the report of usage is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the blanket licensee, including unique identifier(s) (such as, if applicable, Uniform Resource Locators (URLs)) that can be used to locate and listen to the sound recording, accompanied by clear instructions describing how to do so (such audio access may be limited to a preview or sample of the sound recording lasting at least 30 seconds), subject to paragraph (e)(3) of this section;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) ISRC(s);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) UPC(s); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s);

(*9*) Distributor(s); and

(*10*) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the blanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s);

(*2*) Publisher(s) with applicable U.S. rights;

(*3*) Musical work copyright owner(s);

(*4*) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(*5*) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the blanket licensee, or any corporate parent, subsidiary, or affiliate of the blanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Where any of the information called for by paragraph (e)(1) of this section, except for playing time, is acquired by the blanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the blanket licensee revises, re-titles, or otherwise modifies such information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), the blanket licensee shall report as follows:

(i) It shall be sufficient for the blanket licensee to report either the licensor-provided version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, except for the reporting of any information belonging to a category of information that was not periodically modified by that blanket licensee prior to the license availability date, any unique identifier (including but not limited to ISRC and ISWC), or any release date. On and after September 17, 2021, it additionally shall not be sufficient for the blanket licensee to report a modified version of

any sound recording name, featured artist, version, or album title.

(ii) Where the blanket licensee must otherwise report the licensor-provided version of such information under paragraph (e)(2)(i) of this section, but to the best of its knowledge, information, and belief no longer has possession, custody, or control of the licensor-provided version, reporting the modified version of such information will satisfy its obligations under paragraph (e)(1) of this section if the blanket licensee certifies to the mechanical licensing collective that to the best of the blanket licensee's knowledge, information, and belief: The information at issue belongs to a category of information called for by paragraph (e)(1) of this section (each of which must be identified) that was periodically modified by the particular blanket licensee prior to October 19, 2020; and that despite engaging in good-faith, commercially reasonable efforts, the blanket licensee has not located the licensor-provided version in its records. A certification need not identify specific sound recordings or musical works, and a single certification may encompass all licensor-provided information satisfying the conditions of the preceding sentence. The blanket licensee should deliver this certification prior to or contemporaneously with the first-delivered report of usage containing information to which this paragraph (e)(2)(ii) is applicable and need not provide the same certification to the mechanical licensing collective more than once.

(3) With respect to the obligation under paragraph (e)(1) of this section for blanket licensees to report unique identifiers that can be used to locate and listen to sound recordings accompanied by clear instructions describing how to do so:

(i) On and after the license availability date, blanket licensees providing such unique identifiers may not impose conditions that materially diminish the degree of access to sound recordings in connection with their potential use by the mechanical licensing collective or its registered users in connection with their use of the collective's claiming portal (*e.g.*, if a paid subscription is not required to listen to a sound recording as of the license availability date, the blanket licensee should not later impose a subscription fee for users to access the recording through the portal). Nothing in this paragraph (e)(3)(i) shall be construed as restricting a blanket licensee from otherwise imposing conditions or diminishing access to sound recordings: With respect to other users or methods of access to its service(s), including the general public; if required by a relevant agreement with a sound recording copyright owner or other licensor of sound recordings; or where such sound recordings are no longer made available through its service(s).

(ii) Blanket licensees who do not assign such unique identifiers as of September 17, 2020, may make use of a transition period ending September 17, 2021, during which the requirement to report such unique identifiers accompanied by instructions shall be waived upon notification, including a description of any implementation obstacles, to the mechanical licensing collective.

(iii)(A) By no later than December 16, 2020, and on a quarterly basis for the succeeding year, or as otherwise directed by the Copyright Office, the mechanical licensing collective and digital licensee coordinator shall report to the Copyright Office regarding the ability of users to listen to sound recordings for identification purposes through the collective's claiming portal. In addition to any other information requested, each report shall:

(*1*) Identify any implementation obstacles preventing the audio of any reported sound recording from being accessed directly or indirectly through the portal without cost to portal users (including any obstacles described by any blanket licensee pursuant to paragraph (e)(3)(ii) of this section, along with such licensee's identity), and any other obstacles to improving the experience of portal users seeking to identify musical works and their owners;

(*2*) Identify an implementation strategy for addressing any identified obstacles, and, as applicable, what progress has been made in addressing such obstacles; and

(*3*) Identify any agreements between the mechanical licensing collective and

blanket licensee(s) to provide for access to the relevant sound recordings for portal users seeking to identify musical works and their owners through an alternate method rather than by reporting unique identifiers through reports of usage (*e.g.*, separately licensed solutions). If such an alternate method is implemented pursuant to any such agreement, the requirement to report unique identifiers that can be used to locate and listen to sound recordings accompanied by clear instructions describing how to do so is lifted for the relevant blanket licensee(s) for the duration of the agreement.

(B) The mechanical licensing collective and digital licensee coordinator shall cooperate in good faith to produce the reports required under paragraph (e)(3)(iii)(A) of this section, and shall submit joint reports with respect to areas on which they can reach substantial agreement, but which may contain separate report sections on areas where they are unable to reach substantial agreement. Such cooperation may include work through the operations advisory committee.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the blanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a blanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.

(5) A blanket licensee may make use of a transition period ending September 17, 2021, during which the blanket licensee need not report information that would otherwise be required by paragraph (e)(1)(i)(E) or (e)(1)(ii) of this section, unless:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) It belongs to a category of information that is reported by the particular blanket licensee pursuant to any voluntary license or individual download license; or

(iii) It belongs to a category of information that was periodically reported by the particular blanket licensee prior to the license availability date.

(f) *Content of annual reports of usage.* An annual report of usage, covering the full fiscal year of the blanket licensee, shall be clearly and prominently identified as an ''Annual Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The fiscal year covered by the annual report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. 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.

(4) The following information, which may, as appropriate, be calculated using estimates permitted under paragraph (d)(2)(i) of this section, cumulative for the applicable annual reporting period, for each month for each applicable activity or offering including as may be defined in part 385 of this title, and broken down by month and by each such applicable activity or offering:

(i) The total royalty payable by the blanket licensee under the blanket license, computed in accordance with the requirements of this section and part 385 of this title. Where the blanket licensee will receive an invoice under paragraph (k)(4) of this section with respect to an adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this

section, the reporting of such total royalty payable may exclude non-invoiced amounts related to such adjustment.

(ii) The total sum paid to the mechanical licensing collective under the blanket license, including the amount of any adjustment delivered contemporaneously with the annual report of usage.

(iii) The total adjustment(s) made by any report of adjustment adjusting any monthly report of usage covered by the applicable annual reporting period, including any adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section. Where the blanket licensee will receive an invoice under paragraph (k)(4) of this section with respect to an adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section, the reporting of such total adjustment(s) may exclude non-invoiced amounts related to such adjustment.

(iv) The total number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each sound recording used, whether pursuant to a blanket license, voluntary license, or individual download license.

(v) To the extent applicable to the calculation of royalties owed by the blanket licensee under the blanket license:

(A) Total service provider revenue, as may be defined in part 385 of this title.

(B) Total costs of content, as may be defined in part 385 of this title.

(C) Total deductions of performance royalties, as may be defined in and permitted by part 385 of this title.

(D) Total subscribers, as may be defined in part 385 of this title.

(5) The amount of late fees, if applicable, included in any payment associated with the annual report of usage.

(g) *Processing and timing.* (1) Each monthly report of usage and related royalty payment must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period. Where a monthly report of usage satisfying the requirements of 17 U.S.C. 115 and this section is delivered to the mechanical licensing collective no later than 15 calendar days after the end of the applicable monthly reporting period, the mechanical licensing collective shall deliver an invoice to the blanket licensee no later than 40 calendar days after the end of the applicable monthly reporting period that sets forth the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, which shall be broken down by each applicable activity or offering including as may be defined in part 385 of this title.

(2) After receiving a monthly report of usage, the mechanical licensing collective shall engage in the following actions, among any other actions required of it:

(i) The mechanical licensing collective shall engage in efforts to identify the musical works embodied in sound recordings reflected in such report, and the copyright owners of such musical works (and shares thereof).

(ii) The mechanical licensing collective shall engage in efforts to confirm uses of musical works subject to voluntary licenses and individual download licenses, and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license. These efforts may include providing copyright owners with information on usage of their respective musical works that was identified by a digital music provider as subject to a voluntary license or individual download license.

(iii) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to confirm proper payment of the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(iv) Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph

(g)(1) of this section, the mechanical licensing collective shall engage in efforts to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(v) The mechanical licensing collective shall deliver a response file to the blanket licensee if requested by the blanket licensee, and the blanket licensee may request an invoice even if not entitled to an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section. Such requests may be made in connection with a particular monthly report of usage or via a one-time request that applies to future reporting periods. Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file to the blanket licensee contemporaneously with such invoice. The mechanical licensing collective shall otherwise deliver the response file and/or invoice, as applicable, to the blanket licensee in a reasonably timely manner, but no later than 70 calendar days after the end of the applicable monthly reporting period if the blanket licensee has delivered its monthly report of usage and related royalty payment no later than 45 calendar days after the end of the applicable monthly reporting period. In all cases, the response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators, and shall include the results of the process described in paragraphs (g)(2)(i) through (iv) of this section on a track-by-track and ownership-share basis, with updates to reflect any new results from the previous month. Response files shall include the following minimum information: song title, mechanical licensing collective-assigned song code, composer(s), publisher name, including top publisher, original publisher, and admin publisher, publisher split, mechanical licensing collective-assigned publisher number, publisher/license status (whether each work share is subject to the blanket license or a voluntary license or individual download license), royalties per work share, effective per-play rate, time-adjusted plays, and the unique identifier for each applicable voluntary license or individual download license provided to the mechanical licensing collective pursuant to § 210.24(b)(8)(vi).

(3) Each annual report of usage must be delivered to the mechanical licensing collective no later than the 20th day of the sixth month following the end of the fiscal year covered by the annual report of usage.

(4) The required timing for any report of adjustment shall be as follows:

(i) Where a report of adjustment adjusting a monthly report of usage is not combined with an annual report of usage, as described in paragraph (k)(1) of this section, a report of adjustment adjusting a monthly report of usage must be delivered to the mechanical licensing collective after delivery of the monthly report of usage being adjusted and before delivery of the annual report of usage for the annual period covering such monthly report of usage.

(ii) A report of adjustment adjusting an annual report of usage must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same annual report of usage at different points in time, a separate 6-month period runs for each such triggering event.

(h) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among blanket licensees. The mechanical licensing

collective must offer at least two options, where one is dedicated to smaller blanket licensees that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger blanket licensees with more sophisticated operations. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than two reporting or data standards or formats.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A report of usage and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of usage to the payment.

(3) The mechanical licensing collective may modify the requirements it adopts under paragraphs (h)(1) and (2) of this section at any time, after good-faith consultation with the operations advisory committee and taking into consideration any technological and cost burdens that may reasonably be expected to result and the proportionality of those burdens to any reasonably expected benefits, provided that advance notice of any such change is reflected on its website and delivered to blanket licensees using the contact information provided in each respective licensee's notice of license. A blanket licensee shall not be required to comply with any such change before the first reporting period ending at least 30 calendar days after delivery of such notice, unless such change is a significant change, in which case, compliance shall not be required before the first reporting period ending at least one year after delivery of such notice. For purposes of this paragraph (h)(3), a *significant change* occurs where the mechanical licensing collective changes any policy requiring information to be provided under particular reporting or data standards or formats. Where delivery of the notice required by this paragraph (h)(3) is attempted but unsuccessful because the contact information in the blanket licensee's notice of license is not current, the grace periods established by this paragraph (h)(3) shall begin to run from the date of attempted delivery. Nothing in this paragraph (h)(3) empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(4) The mechanical licensing collective shall, by no later than the license availability date, establish an appropriate process by which any blanket licensee may voluntarily make advance deposits of funds with the mechanical licensing collective against which future royalty payments may be charged.

(5) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities. An annual report of usage shall be delivered for each fiscal year during which at least one monthly report of usage was required to have been delivered. An annual report of usage does not replace any monthly report of usage.

(6)(i) Where a blanket licensee attempts to timely deliver a report of usage and/or related royalty payment to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the blanket licensee knew or should have known at the time, if the blanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage and/or related royalty payment to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then the mechanical licensing collective shall act as follows:

(A) The mechanical licensing collective shall fully credit the blanket licensee for any applicable late fee paid by the blanket licensee as a result of the untimely delivery of the report of usage and/or related royalty payment.

(B) The mechanical licensing collective shall not use the untimely delivery of the report of usage and/or related royalty payment as a basis to terminate the blanket licensee's blanket license.

(ii) In the event of a good-faith dispute regarding whether a blanket licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the mechanical licensing collective's applicable information technology systems, a blanket licensee that complies with the requirements of paragraph (h)(6)(i) of this section within a reasonable period of time shall receive the protections of paragraphs (h)(6)(i)(A) and (B) of this section.

(7) The mechanical licensing collective shall provide a blanket licensee with written confirmation of receipt no later than 2 business days after receiving a report of usage and no later than 2 business days after receiving any payment.

(i) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have examined this monthly report of usage, and (3) 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.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have prepared or supervised the preparation of the data used by the blanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the blanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that (A) the processes generated monthly reports of usage that accurately reflect, in all material respects, the blanket licensee's usage of musical works, the statutory royalties applicable thereto (to the extent reported), and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations, and (B) the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(6) A certification that the blanket licensee has, for the period covered by the monthly report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(j) *Certification of annual reports of usage.* (1) Each annual report of usage shall be accompanied by:

(i) The name of the person who is signing the annual report of usage on behalf of the blanket licensee.

(ii) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature.

(iv) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person signing the annual report of usage.

(v) The following statement: I am duly authorized to sign this annual report of usage on behalf of the blanket licensee.

(vi) A certification that the blanket licensee has, for the period covered by the annual report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(2) Each annual report of usage shall also be certified by a licensed certified public accountant. Such certification shall comply with the following requirements:

(i) Except as provided in paragraph (j)(2)(ii) of this section, the accountant shall certify that it has conducted an examination of the annual report of usage prepared by the blanket licensee in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and has rendered an opinion based on such examination that the annual report of usage conforms with the standards in paragraph (j)(2)(iv) of this section.

(ii) If such accountant determines in its professional judgment that the volume of data attributable to a particular blanket licensee renders it impracticable to certify the annual report of usage as required by paragraph (j)(2)(i) of this section, the accountant may instead certify the following:

(A) That the accountant has conducted an examination in accordance with the attestation standards established by the American Institute of Certified Public Accountants of the following assertions by the blanket licensee's management:

(*1*) That the processes used by or on behalf of the blanket licensee generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section; and

(*2*) That the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(B) That such examination included examining, either on a test basis or otherwise as the accountant considered necessary under the circumstances and in its professional judgment, evidence supporting the management assertions in paragraph (j)(2)(ii)(A) of this section, and performing such other procedures as the accountant considered necessary in the circumstances.

(C) That the accountant has rendered an opinion based on such examination that the processes used to generate the annual report of usage generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section, and that the internal controls relevant to the processes used to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(iii) In the event a third party or third parties acting on behalf of the blanket licensee provided services related to the annual report of usage, the accountant making a certification under either paragraph (j)(2)(i) or (ii) of this section may, as the accountant considers necessary under the circumstances and in its professional judgment, rely on a report and opinion rendered by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants that the processes and/or internal controls of the third party or third parties relevant to the generation of the blanket licensee's annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage, if such reliance is disclosed in the certification.

(iv) An annual report of usage conforms with the standards of this paragraph (j) if it presents fairly, in all material respects, the blanket licensee's usage of musical works in covered activities during the period covered by the annual report of usage, the statutory royalties applicable thereto (to the extent reported), and such other data as are relevant to the calculation of statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(v) Each 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.

(3) If the annual report of usage is delivered electronically, the blanket licensee may deliver an electronic facsimile of the original certification of the annual report of usage signed by the licensed certified public accountant. The blanket licensee shall retain the original certification of the annual report of usage signed by the licensed certified public accountant for the period identified in paragraph (m) of this section, which shall be made available to the mechanical licensing collective upon demand.

(k) *Adjustments.* (1) A blanket licensee may adjust one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, by delivering to the mechanical licensing collective a report of adjustment. A report of adjustment adjusting one or more monthly reports of usage may, but need not, be combined with the annual report of usage for the annual period covering such monthly reports of usage and related payments. In such cases, such an annual report of usage shall also be considered a report of adjustment, and must satisfy the requirements of both paragraphs (f) and (k) of this section.

(2) A report of adjustment, except when combined with an annual report of usage, shall be clearly and prominently identified as a ''Report of Adjustment Under Compulsory Blanket License for Making and Distributing Phonorecords.'' A report of adjustment that is combined with an annual report of usage shall be identified in the same manner as any other annual report of usage.

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly reports of usage or annual reports of usage, including a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the blanket licensee under the blanket license depends. Such description shall include all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the adjusted royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of the adjustment under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2)(i) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the blanket licensee shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the report of adjustment or promptly after receiving an invoice from the mechanical licensing collective that sets forth the royalties payable by the blanket licensee under the blanket license with respect to the adjustment, which shall be broken down by each applicable activity or offering including as may be defined in part 385 of this title. Where the blanket licensee will receive a response file under paragraph (k)(8) of this section, the mechanical licensing collective shall deliver the invoice to the blanket licensee contemporaneously with such response file. The mechanical licensing collective shall otherwise deliver the invoice to the blanket licensee in a reasonably timely manner. A report of

adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the blanket licensee's account, or upon request, issue a refund within a reasonable period of time.

(6) A report of adjustment adjusting an annual report of usage may only be made:

(i) In exceptional circumstances;

(ii) When making an adjustment to a previously estimated input under paragraph (d)(2)(i) of this section;

(iii) Following an audit under 17 U.S.C. 115(d)(4)(D);

(iv) Following any other audit of a blanket licensee that concludes after the annual report of usage is delivered and that has the result of affecting the computation of the royalties payable by the blanket licensee under the blanket license (*e.g.*, as applicable, an audit by a sound recording copyright owner concerning the amount of applicable consideration paid for sound recording copyright rights); or

(v) In response to a change in applicable rates or terms under part 385 of this title.

(7) A report of adjustment adjusting a monthly report of usage must be certified in the same manner as a monthly report of usage under paragraph (i) of this section. A report of adjustment adjusting an annual report of usage must be certified in the same manner as an annual report of usage under paragraph (j) of this section, except that the examination by a certified public accountant under paragraph (j)(2) of this section may be limited to the adjusted material and related recalculation of royalties payable. Where a report of adjustment is combined with an annual report of usage, its content shall be subject to the certification covering the annual report of usage with which it is combined.

(8) If requested by the blanket licensee, the mechanical licensing collective shall deliver a response file to the blanket licensee that contains the information required by paragraph (g)(2)(v) of this section to the extent applicable to the adjustment. The response file shall be delivered no later than 45 calendar days after receiving the relevant report of adjustment, unless the report of adjustment is combined with an annual report of usage, in which case the response file shall be delivered no later than 60 calendar days after receiving the relevant annual report of usage.

(9) The mechanical licensing collective may make use of a transition period ending February 24, 2023, during which the mechanical licensing collective shall not be required to deliver invoices or response files within the timeframes specified in paragraphs (k)(4) and (8) of this section.

(l) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation of facts or information contained in other documents or records.

(m) *Documentation and records of use.* (1) Each blanket licensee shall, for a period of at least seven years from the date of delivery of a report of usage to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such report of usage (except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the report of usage containing the final adjustment of such input), including but not limited to the following:

(i) Records and documents accounting for digital phonorecord deliveries that do not constitute plays, constructive plays, or other payable units.

(ii) Records and documents pertaining to any promotional or free trial uses that are required to be maintained under applicable provisions of part 385 of this title.

(iii) Records and documents identifying or describing each of the blanket licensee's applicable activities or offerings including as may be defined in

part 385 of this title, including information sufficient to reasonably demonstrate whether the activity or offering qualifies as any particular activity or offering for which specific rates and terms have been established in part 385 of this title, and which specific rates and terms apply to such activity or offering.

(iv) Records and documents with information sufficient to reasonably demonstrate, if applicable, whether service revenue and total cost of content, as those terms may be defined in part 385 of this title, are properly calculated in accordance with part 385 of this title.

(v) Records and documents with information sufficient to reasonably demonstrate whether and how any royalty floor established in part 385 of this title does or does not apply.

(vi) Records and documents containing such other information as is necessary to reasonably support and confirm all usage and calculations (including of any inputs provided to the mechanical licensing collective to enable further calculations) contained in the report of usage, including but not limited to, as applicable, relevant information concerning subscriptions, devices and platforms, discount plans (including how eligibility was assessed), bundled offerings (including their constituent components and pricing information), and numbers of end users and subscribers (including unadjusted numbers and numbers adjusted as may be permitted by part 385 of this title).

(vii) Any other records or documents that may be appropriately examined pursuant to an audit under 17 U.S.C. 115(d)(4)(D).

(2) The mechanical licensing collective or its agent shall be entitled to reasonable access to records and documents described in paragraph (m)(1) of this section, which shall be provided promptly and arranged for no later than 30 calendar days after the mechanical licensing collective's reasonable request, subject to any confidentiality to which they may be entitled. The mechanical licensing collective shall be entitled to make one request per quarter covering a period of up to one quarter in the aggregate. With respect to the total cost of content, as that term may be defined in part 385 of this title, the access permitted by this paragraph (m)(2) shall be limited to accessing the aggregated figure kept by the blanket licensee on its books for the relevant reporting period(s). Neither the mechanical licensing collective nor its agent shall be entitled to access any records or documents retained solely pursuant to paragraph (m)(1)(vii) of this section outside of an applicable audit. Each report of usage must include clear instructions on how to request access to records and documents under this paragraph (m).

(3) Each blanket licensee shall, in accordance with paragraph (m)(4) of this section, keep and retain in its possession and report the following information:

(i) With respect to each sound recording, that embodies a musical work, first licensed or obtained for use in covered activities by the blanket licensee on or after the effective date of its blanket license:

(A) Each of the following dates to the extent reasonably available:

(*1*) The date on which the sound recording was first reproduced by the blanket licensee on its server (''server fixation date'').

(*2*) The date on which the sound recording was first released on the blanket licensee's service (''street date'').

(B) If neither of the dates specified in paragraph (m)(3)(i)(A) of this section is reasonably available, the date that, in the assessment of the blanket licensee, provides a reasonable estimate of the date the sound recording was first distributed on its service within the United States (''estimated first distribution date'').

(ii) A record of materially all sound recordings embodying musical works in its database or similar electronic system as of a time reasonably approximate to the effective date of its blanket license. For each recording, the record shall include the sound recording name(s), featured artist(s), unique identifier(s) assigned by the blanket licensee, actual playing time, and, to the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in

covered activities, ISRC(s). The blanket licensee shall use commercially reasonable efforts to make this record as accurate and complete as reasonably possible in representing the blanket licensee's repertoire as of immediately prior to the effective date of its blanket license.

(4)(i) Each blanket licensee must deliver the information described in paragraph (m)(3)(i) of this section to the mechanical licensing collective at least annually and keep and retain this information until delivered. Such reporting must include the following:

(A) For each sound recording, the same categories of information described in paragraph (m)(3)(ii) of this section.

(B) For each date, an identification of which type of date it is (*i.e.*, server fixation date, street date, or estimated first distribution date).

(ii) A blanket licensee must deliver the information described in paragraph (m)(3)(ii) of this section to the mechanical licensing collective as soon as commercially reasonable, and no later than contemporaneously with its first reporting under paragraph (m)(4)(i) of this section.

(iii) Prior to being delivered to the mechanical licensing collective, the collective or its agent shall be entitled to reasonable access to the information kept and retained pursuant to paragraphs (m)(4)(i) and (ii) of this section if needed in connection with applicable directions, instructions, or orders concerning the distribution of royalties.

(5) Nothing in paragraph (m)(3) or (4) of this section, nor the collection, maintenance, or delivery of information under paragraphs (m)(3) and (4) of this section, nor the information itself, shall be interpreted or construed:

(i) To alter, limit, or diminish in any way the ability of an author or any other person entitled to exercise rights of termination under section 203 or 304 of title 17 of the United States Code from fully exercising or benefiting from such rights;

(ii) As determinative of the date of the license grant with respect to works as it pertains to sections 203 and 304 of title 17 of the United States Code; or

(iii) To affect in any way the scope or effectiveness of the exercise of termination rights, including as pertaining to derivative works, under section 203 or 304 of title 17 of the United States Code.

(n) *Voluntary agreements with mechanical licensing collective to alter process.* (1) Subject to the provisions of 17 U.S.C. 115, a blanket licensee and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraphs (i) and (j) of this section may not be altered by agreement. This paragraph (n)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (n)(1) of this section that includes the name of the blanket licensee (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the blanket licensee engages in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (n)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

[85 FR 58143, Sept. 17, 2020, as amended at 86 FR 12826, Mar. 5, 2021; 87 FR 31427, May 24, 2022]

§ 210.28 Reports of usage for significant nonblanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a significant nonblanket licensee pursuant to 17 U.S.C. 115(d)(6)(A)(ii). A significant nonblanket licensee shall report to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(d)(6)(A)(ii) and this section. A significant nonblanket licensee may make adjustments to its reports of usage in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage*, unless otherwise specified, refers to all reports of usage required to be delivered by a significant nonblanket licensee to the mechanical licensing collective, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by blanket licensees under 17 U.S.C. 115(d)(4)(A) and § 210.27.

(2) A *monthly report of usage* is a report of usage identified in 17 U.S.C. 115(d)(6)(A)(ii), and required to be delivered by a significant nonblanket licensee to the mechanical licensing collective.

(3) A *report of adjustment* is a report delivered by a significant nonblanket licensee to the mechanical licensing collective adjusting one or more previously delivered monthly reports of usage.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a ''Significant Nonblanket Licensee Monthly Report of Usage for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities. If the significant nonblanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. 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.

(4) For each sound recording embodying a musical work that is used by the significant nonblanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5)(i) For each voluntary license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. This paragraph (c)(5)(i) does not apply to any authority obtained by a significant nonblanket licensee from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license.

(ii) For any authority obtained by a significant nonblanket licensee from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license, and where such authority does not cover all permanent downloads made available on the service, a list of all

sound recordings for which the significant nonblanket licensee has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the significant nonblanket licensee indicates that such authority otherwise exists for all permanent downloads, and identification of the significant nonblanket licensee's covered activities operated under such authority. If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) The mechanical royalties payable by the significant nonblanket licensee for the applicable monthly reporting period for engaging in covered activities pursuant to each applicable voluntary license and individual download license.

(2) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the significant nonblanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the significant nonblanket licensee's public-facing service;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the significant nonblanket licensee in connection with its use of sound recordings of musical works to engage in covered activities:

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) ISRC(s);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) UPC(s); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s);

(*9*) Distributor(s); and

(*10*) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the significant nonblanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s);

(*2*) Publisher(s) with applicable U.S. rights;

(*3*) Musical work copyright owner(s);

(*4*) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(*5*) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the significant nonblanket licensee, or any corporate parent, subsidiary, or affiliate of the significant nonblanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Where any of the information called for by paragraph (e)(1) of this section, except for playing time, is acquired by the significant nonblanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the significant nonblanket licensee revises, re-titles, or otherwise modifies such information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), the significant nonblanket licensee shall report as follows:

(i) It shall be sufficient for the significant nonblanket licensee to report either the licensor-provided version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, except that it shall not be sufficient for the significant nonblanket licensee to report a modified version of any information belonging to a category of information that was not periodically modified by that significant nonblanket licensee prior to the license availability date, any unique identifier (including but not limited to ISRC and ISWC), or any release date.

(ii) Where the significant nonblanket licensee must otherwise report the licensor-provided version of such information under paragraph (e)(2)(i) of this section, but to the best of its knowledge, information, and belief no longer has possession, custody, or control of the licensor-provided version, reporting the modified version of such information will satisfy its obligations under paragraph (e)(1) of this section if the significant nonblanket licensee certifies to the mechanical licensing collective that to the best of the significant nonblanket licensee's knowledge, information, and belief: The information at issue belongs to a category of information called for by paragraph (e)(1) of this section (each of which must be identified) that was periodically modified by the particular significant nonblanket licensee prior to October 19, 2020; and that despite engaging in good-faith, commercially reasonable efforts, the significant nonblanket licensee has not located the licensor-provided version in its records. A certification need not identify specific sound recordings or musical works, and a single certification may encompass all licensor-provided information satisfying the conditions of the preceding sentence. The significant nonblanket licensee should deliver this certification prior to or contemporaneously with the first-delivered report of usage containing information to which this paragraph (e)(2)(ii) is applicable and need not provide the same certification to the mechanical licensing collective more than once.

(3) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the significant nonblanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a significant nonblanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.

(4) A significant nonblanket licensee may make use of a transition period ending September 17, 2021, during which the significant nonblanket licensee need not report information that would otherwise be required by paragraph (e)(1)(i)(E) or (e)(1)(ii) of this section, unless:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) It belongs to a category of information that is reported by the particular significant nonblanket licensee

pursuant to any voluntary license or individual download license; or

(iii) It belongs to a category of information that was periodically reported by the particular significant nonblanket licensee prior to the license availability date.

(f) *Timing.* (1) An initial report of usage must be delivered to the mechanical licensing collective contemporaneously with the significant nonblanket licensee's notice of nonblanket activity. Each subsequent monthly report of usage must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period.

(2) A report of adjustment may only be delivered to the mechanical licensing collective once annually, between the end of the significant nonblanket licensee's fiscal year and 6 months after the end of its fiscal year. Such report may only adjust one or more previously delivered monthly reports of usage from the applicable fiscal year.

(g) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in any format accepted by the mechanical licensing collective for blanket licensees under § 210.27(h). With respect to any modifications to formatting requirements that the mechanical licensing collective adopts, the mechanical licensing collective shall follow the consultation process as under § 210.27(h), and significant nonblanket licensees shall be entitled to the same advance notice and grace periods as apply to blanket licensees under § 210.27(h), except the mechanical licensing collective shall use the contact information provided in each respective significant nonblanket licensee's notice of nonblanket activity. Nothing in this paragraph (g)(1) empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(2) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities.

(3) Where a significant nonblanket licensee attempts to timely deliver a report of usage to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the significant nonblanket licensee knew or should have known at the time, if the significant nonblanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). In the event of a good-faith dispute regarding whether a significant nonblanket licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the mechanical licensing collective's applicable information technology systems, neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C) as long as the significant nonblanket licensee complies with the requirements of this paragraph (g)(3) within a reasonable period of time.

(4) The mechanical licensing collective shall provide a significant nonblanket licensee with written confirmation of receipt no later than 2 business days after receiving a report of usage.

(h) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a significant nonblanket licensee that

is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the significant nonblanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have examined this monthly report of usage, and (3) 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.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have prepared or supervised the preparation of the data used by the significant nonblanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the significant nonblanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that (A) the processes generated monthly reports of usage that accurately reflect, in all material respects, the significant nonblanket licensee's usage of musical works and the royalties applicable thereto, and (B) the internal controls relevant to the processes used by or on behalf of the significant nonblanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(i) *Adjustments.* (1) A significant nonblanket licensee may adjust one or more previously delivered monthly reports of usage by delivering to the mechanical licensing collective a report of adjustment.

(2) A report of adjustment shall be clearly and prominently identified as a ''Significant Nonblanket Licensee Report of Adjustment for Making and Distributing Phonorecords.''

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly report(s) of usage to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly report(s) of usage.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) A report of adjustment must be certified in the same manner as a monthly report of usage under paragraph (h) of this section.

(j) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation of facts or information contained in other documents or records.

(k) *Harmless errors.* Errors in the delivery or content of a report of usage that do not materially affect the adequacy of the information required to serve the purpose of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the report invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (k) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(l) *Voluntary agreements with mechanical licensing collective to alter process.* (1) Subject to the provisions of 17 U.S.C. 115, a significant nonblanket licensee and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraph (h) of this section may not be altered by agreement. This paragraph (l)(1) does

not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (l)(1) of this section that includes the name of the significant nonblanket licensee (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (l)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

[85 FR 58143, Sept. 17, 2020, as amended at 86 FR 12827, Mar. 5, 2021]

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(a) *General.* This section prescribes reporting obligations of the mechanical licensing collective to copyright owners for the distribution of royalties for musical works, licensed under the blanket license for digital uses prescribed in 17 U.S.C. 115(d)(1), that have been matched, either through the processing by the mechanical licensing collective upon receipt of a report of usage and royalty payment from a digital music provider, or during the holding period for unmatched works as defined in 17 U.S.C. 115(d)(3)(H)(i).

(b) *Distribution of royalties and royalty statements.* (1) Royalty distributions shall be made on a monthly basis and shall include, separately or together:

(i) All royalties payable to a copyright owner for a musical work matched in the ordinary course under 17 U.S.C. 115(d)(3)(G)(i)(II); and

(ii) All accrued royalties for any particular musical work that has been matched and a proportionate amount of accrued interest associated with that work.

(2) Royalty distributions based on adjustments to reports of usage by digital music providers in prior periods shall be made by the mechanical licensing collective at least once annually, upon submission of the annual reports of usage by digital music providers reporting total adjustments to the mechanical licensing collective pursuant to § 210.27(f) and (g)(3) and (4).

(3) Royalty distributions shall be accompanied by corresponding royalty statements containing the information set forth in paragraph (c) of this section for the royalties contained in the distribution.

(c) *Content*—(1) *General content of royalty statements.* Accompanying the distribution of royalties to a copyright owner, the mechanical licensing collective shall provide to the copyright owner a statement that includes, at a minimum, the following information:

(i) The period (month and year) covered by the statement, and the period (month and year) during which the reported activity occurred. For adjustments, the mechanical licensing collective shall report both the period (month and year) during which the original reported activity occurred and the date on which the digital music provider reported the adjustment.

(ii) The name and address of the mechanical licensing collective.

(iii) The name and mechanical licensing collective identification number of the copyright owner.

(iv) ISNI and IPI name and identification number for each songwriter, administrator, and musical work copyright owner, to the extent it has been provided to the mechanical licensing collective by a copyright owner.

(v) The name and mechanical licensing collective identification number of the copyright owner's administrator (if applicable), to the extent one has been provided to the mechanical licensing collective by a copyright owner.

(vi) Payment information, such as check number, automated clearing house (ACH) identification, or wire transfer number.

(vii) The total royalty payable to the relevant copyright owner for the month covered by the royalty statement.

(2) *Musical work information.* For each matched musical work owned by the copyright owner for which accompanying royalties are being distributed to that copyright owner, the mechanical licensing collective shall report the following information:

(i) The musical work name, including primary and any alternative and parenthetical titles for the musical work known to the mechanical licensing collective.

(ii) ISWC for the musical work, to the extent it is known to the mechanical licensing collective.

(iii) The mechanical licensing collective's standard identification number of the musical work.

(iv) The administrator's unique identifier for the musical work, to the extent one has been provided to the mechanical licensing collective by a copyright owner or its administrator.

(v) The name(s) of the songwriter(s), to the extent they are known to the mechanical licensing collective.

(vi) The percentage share of musical work owned or controlled by the copyright owner.

(vii) For each sound recording embodying the musical work, the identifying information enumerated in paragraph (c)(3) of this section and the royalty information enumerated in paragraph (c)(4) of this section.

(3) *Sound recording information.* (i) For each sound recording embodying a musical work included in a royalty statement, the mechanical licensing collective shall report the following information:

(A) The sound recording name(s), including all known alternative and parenthetical titles for the sound recording.

(B) The featured artist(s).

(ii) The mechanical licensing collective shall report the following information to the extent it is known to the mechanical licensing collective:

(A) The record label name(s).

(B) ISRC(s).

(C) The sound recording copyright owner(s).

(D) Playing time.

(E) Album title(s) or product name(s).

(F) Album or product featured artist(s), if different from sound recording featured artist(s).

(G) Distributor(s).

(H) UPC(s).

(4) *Royalty information.* The mechanical licensing collective shall separately report, for each service, offering, or activity reported by a blanket licensee, the following royalty information for each sound recording embodying a musical work included in a royalty statement:

(i) The name of the blanket licensee and, if different, the trade or consumer facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities.

(ii) The service tier or service description.

(iii) The use type (download, limited download, or stream).

(iv) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays.

(v) A detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient to allow the copyright owner to assess the manner in which the royalty owed was determined and the accuracy of the royalty calculations, which shall include details on each of the components used in the calculation of the payable royalty pool.

(vi) The royalty rate and amount.

(vii) The interest amount.

(viii) The distribution amount.

(d) *Cumulative statements of account, and adjustments.* (1) For royalties reported under paragraph (b)(1)(ii) of this section, the mechanical licensing collective shall provide a cumulative statement of account that includes, in addition to the information in paragraph (c) of this section, a clear identification of the total period covered and the total royalty payable for the period.

(2) For adjustments reported under paragraph (b)(2) of this section, the mechanical licensing collective shall clearly indicate the original reporting period of the royalties being adjusted.

(e) *Delivery of royalty statements.* (1) Royalty statements may be delivered electronically, including by providing access to statements through an online password protected portal, accompanied by written notification of the availability of the statement in the portal.

(2) The mechanical licensing collective shall provide by request a separate, simplified report containing fewer data fields that may be more understandable for the copyright owner, and may provide royalty information to copyright owners by request in alternative formats.

(3) Upon written request of the copyright owner, the mechanical licensing collective may deliver a physical statement by mail where the statement reports a total royalty payable to the copyright owner for the period covered that is equal or greater than $100. Royalty statements delivered by mail are not required to contain all information identified in paragraph (c) of this section, but may instead provide information in a simplified or summary format.

(f) *Clear statements.* The information required by paragraph (c) of this section requires intelligible, legible, and unambiguous statements in the royalty statements without incorporation of facts or information contained in other documents or records.

(g) *Certification.* (1) Each royalty statement in which the total royalty payable to the relevant copyright owner for the month covered is equal to or greater than $100 shall be accompanied by:

(i) The name of the person who is signing and certifying the statement.

(ii) A signature of a duly authorized officer of the mechanical licensing collective.

(iii) The date of signature and certification.

(iv) The title or official position held by the person who is signing and certifying the statement.

(v) The following statement: This statement was prepared by the Mechanical Licensing Collective and/or its agent using processes and internal controls that were suitably designed to generate monthly statements that accurately allocate royalties using usage and royalty information provided by digital music providers and musical works information as reflected in the Mechanical Licensing Collective's musical works database.

(2) Beginning in the first calendar year following the license availability date, the certification must also include a statement establishing that such processes and internal controls were subject to an examination, during the past year, by a licensed Certified Public Accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were so suitably designed.

(h) *Reporting threshold.* (1) Subject to paragraph (h)(2) of this section, a separate royalty statement shall be provided for each month during which there is any activity relevant to the distribution of royalties under the blanket license.

(2) Royalties under the blanket license shall not be considered payable, and no royalty statement shall be required, until the cumulative unpaid royalties collected for the copyright owner equal at least one cent. Moreover, in any case in which the cumulative unpaid royalties under the blanket license that would otherwise be distributed by the mechanical licensing collective to the copyright owner are less than $5 if the copyright owner receives payment by direct deposit, $100 if the copyright owner receives payment by physical check, or $250 if the copyright owner receives payment by wire transfer, the mechanical licensing collective may choose to defer the payment date for such royalties and provide no royalty statements until the earlier of the time for rendering the royalty statement for the month in which the unpaid royalties under the blanket license for the copyright owner exceed the threshold, at which time the mechanical licensing collective may provide one statement and payment covering the entire period

for which royalty payments were deferred.

(3) Where the mechanical licensing collective elects to defer the royalty payment and statement to a copyright owner pursuant to paragraph (h)(2) of this section because the accrued royalties did not exceed the applicable threshold, and if a copyright owner submits a written request, the mechanical licensing collective shall make available to that copyright owner information detailing the accrued unpaid royalties processed as of the date of the request.

(4) If the mechanical licensing collective is required, under applicable tax law and regulations, to make backup withholding from its payments required hereunder, the mechanical licensing collective shall indicate the amount of such withholding on the royalty statement or on or with the distribution.

(i) *Annual statement.* The mechanical license collective shall provide an annual statement by electronic means to any copyright owner who has received at least one royalty statement under paragraph (h)(1) of this section in the calendar year preceding. The annual statement shall include a cumulative statement of the information reported in the monthly royalty statements in the year preceding, as well as a statement of any adjustments to royalty distributions reported in the year preceding.

[85 FR 58165, Sept. 17, 2020]

§ 210.30 Temporary exception to certain reporting requirements about certain permanent download licenses.

(a) Where a requirement of § 210.24(b)(8), § 210.25(b)(6), § 210.27(c)(5), or § 210.28(c)(5) has not been satisfied with respect to an individual download license or voluntary pass-through license before April 5, 2021, in connection with a submission to the mechanical licensing collective before such date, a submitter may take additional time to comply with such reporting obligations, as amended, by no later than May 19, 2021. Taking such additional time shall not render an otherwise compliant notice of license, notice of nonblanket activity, or report of usage invalid, or provide a basis for the mechanical licensing collective to reject an otherwise compliant notice of license, serve a notice of default on an otherwise compliant blanket licensee, terminate an otherwise compliant blanket license, or engage in legal enforcement efforts against an otherwise compliant significant nonblanket licensee. Any deadline otherwise applicable to any such action by the mechanical licensing collective shall be tolled with respect to a submitter permitted to take additional time to comply with these reporting obligations until May 19, 2021.

(b) For purposes of this section, a *voluntary pass-through license* is a voluntary license obtained by a licensor of sound recordings to make and distribute, or authorize the making and distribution of, permanent downloads embodying musical works through which a digital music provider or significant nonblanket licensee has obtained authority from such licensor of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings.

[85 FR 84245, Dec. 28, 2020, as amended at 86 FR 12827, Mar. 5, 2021]

§ 210.31 Musical works database information.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective will provide information relating to musical works (and shares of such works), and sound recordings in which the musical works are embodied, in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and to increase usability of the database.

(b) *Matched musical works.* With respect to musical works (or shares thereof) where the copyright owners have been identified and located, the musical works database shall contain, at a minimum, the following:

(1) Information regarding the musical work:

(i) Musical work title(s);

(ii) The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive

rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license;

(iii) Contact information for the copyright owner of the musical work (or share thereof), which can be a post office box or similar designation, or a ''care of'' address (*e.g.*, publisher);

(iv) The mechanical licensing collective's standard identifier for the musical work; and

(v) To the extent reasonably available to the mechanical licensing collective:

(A) Any alternative or parenthetical titles for the musical work;

(B) ISWC;

(C) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for matched musical works;

(D) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(E) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter, and administrator;

(F) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(G) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied, to the extent reasonably available to the mechanical licensing collective:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be included, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works.

(c) *Unmatched musical works.* With respect to musical works (or shares thereof) where the copyright owners have not been identified or located, the musical works database shall include, to the extent reasonably available to the mechanical licensing collective:

(1) Information regarding the musical work:

(i) Musical work title(s), including any alternative or parenthetical titles for the musical work;

(ii) The ownership percentage of the musical work for which an owner has not been identified;

(iii) If a musical work copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner. The copyright owner of the musical work owns any one of the exclusive rights comprised in the copyright for that work. A copyright owner includes entities, including foreign collective management organizations (CMOs), to which copyright ownership has been transferred through an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited

in time or place of effect, but not including a nonexclusive license;

(iv) The mechanical licensing collective's standard identifier for the musical work;

(v) ISWC;

(vi) Songwriter(s), with the mechanical licensing collective having the discretion to allow songwriters, or their authorized representatives, to have songwriter information listed anonymously or pseudonymously. The mechanical licensing collective shall develop and make publicly available a policy on how the collective will consider requests by copyright owners or administrators to change songwriter names to be listed anonymously or pseudonymously for unmatched musical works;

(vii) Administrator(s) or other authorized entity(ies) who license the musical work (or share thereof) and/or collect mechanical royalties for use of such musical work (or share thereof) in the United States;

(viii) ISNI(s) and/or IPI(s) for each musical work copyright owner, and, if different, songwriter and administrator;

(ix) Unique identifier(s) assigned by the blanket licensee, if reported by the blanket licensee; and

(x) For classical compositions, opus and catalog numbers.

(2) Information regarding the sound recording(s) in which the musical work is embodied:

(i) ISRC;

(ii) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(iii) Information related to the sound recording copyright owner, including LabelName and PLine. Should the mechanical licensing collective decide to include DDEX Party Identifier (DPID) in the public database, the DPID party's name may be included, but not the numerical identifier;

(iv) Featured artist(s);

(v) Playing time;

(vi) Version;

(vii) Release date(s);

(viii) Producer;

(ix) UPC; and

(x) Other non-confidential information that the MLC reasonably believes, based on common usage, would be useful to assist in associating sound recordings with musical works, and any additional non-confidential information reported to the mechanical licensing collective that may assist in identifying musical works.

(d) *Field labeling.* The mechanical licensing collective shall consider industry practices when labeling fields in the public database to reduce the likelihood of user confusion, particularly regarding information relating to sound recording copyright owner. Fields displaying PLine, LabelName, or, if applicable, DPID, information may not on their own be labeled ''sound recording copyright owner.''

(e) *Data provenance.* For information relating to sound recordings, the mechanical licensing collective shall identify the source of such information in the public musical works database. For sound recording information received from a digital music provider, the MLC shall include the name of the digital music provider.

(f) *Historical data.* The mechanical licensing collective shall maintain at regular intervals historical records of the information contained in the public musical works database, including a record of changes to such database information and changes to the source of information in database fields, in order to allow tracking of changes to the ownership of musical works in the database over time. The mechanical licensing collective shall determine, in its reasonable discretion, the most appropriate method for archiving and maintaining such historical data to track ownership and other information changes in the database.

(g) *Personally identifiable information.* The mechanical licensing collective shall not include in the public musical works database any individual's Social Security Number (SSN), taxpayer identification number, financial account number(s), date of birth (DOB), or home address or personal email to the extent it is not musical work copyright owner contact information required under 17 U.S.C. 115(d)(3)(E)(ii)(III). The mechanical licensing collective shall also engage in reasonable, good-faith efforts to ensure that other personally

identifying information (*i.e.*, information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to such specific individual), is not available in the public musical works database, other than to the extent it is required by law.

(h) *Disclaimer*. The mechanical licensing collective shall include in the public-facing version of the musical works database a conspicuous disclaimer that states that the database is not an authoritative source for sound recording information, and explains the labeling of information related to sound recording copyright owner, including the ''LabelName'' and ''PLine'' fields.

(i) *Ownership*. The data in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E) is public data not owned by the mechanical licensing collective or any of the collective's employees, agents, consultants, vendors, or independent contractors.

[85 FR 86822, Dec. 31, 2020]

§ 210.32 Musical works database usability, interoperability, and usage restrictions.

This section prescribes rules under which the mechanical licensing collective shall ensure the usability, interoperability, and proper usage of the public musical works database created pursuant to 17 U.S.C. 115(d)(3)(E).

(a) *Database access*. (1)(i) The mechanical licensing collective shall make the musical works database available to members of the public in a searchable, real-time, online format, free of charge. In addition, the mechanical licensing collective shall make the musical works database available in a bulk, real-time, machine-readable format through a process for bulk data management widely adopted among music rights administrators to:

(A) Digital music providers operating under the authority of valid notices of license, and their authorized vendors, free of charge;

(B) Significant nonblanket licensees in compliance with their obligations under 17 U.S.C. 115(d)(6), and their authorized vendors, free of charge;

(C) The Register of Copyrights, free of charge; and

(D) Any other person or entity, including agents, consultants, vendors, and independent contractors of the mechanical licensing collective for any purpose other than the ordinary course of their work for the mechanical licensing collective, for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.

(ii) Starting December 31, 2021, the mechanical licensing collective shall make the musical works database available at least in a bulk, real-time, machine-readable format under this paragraph (a)(1) through application programming interfaces (APIs).

(2) Notwithstanding paragraph (a)(1) of this section, the mechanical licensing collective shall establish appropriate terms of use or other policies governing use of the database that allows the mechanical licensing collective to suspend access to any individual or entity that appears, in the mechanical licensing collective's reasonable determination, to be attempting to bypass the mechanical licensing collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper purposes. The mechanical licensing collective's terms of use or other policies governing use of the database shall comply with this section.

(b) *Point of contact for inquiries and complaints*. In accordance with its obligations under 17 U.S.C. 115(d)(3)(D)(ix)(I)(bb), the mechanical licensing collective shall designate a point of contact for inquiries and complaints with timely redress, including complaints regarding the public musical works database and/or the mechanical licensing collective's activities. The mechanical licensing collective must make publicly available, including prominently on its website, the following information:

(1) The name of the designated point of contact for inquiries and complaints. The designated point of contact may be an individual (*e.g.*, ''Jane Doe'') or a specific position or title held by an individual at the mechanical licensing collective (*e.g.*, ''Customer Relations Manager''). Only a single point of contact may be designated.

(2) The physical mail address (street address or post office box), telephone number, and email address of the designated point of contact.

[85 FR 86822, Dec. 31, 2020]

§ 210.33 Annual reporting by the mechanical licensing collective.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective will provide certain information in its annual report pursuant to 17 U.S.C. 115(d)(3)(D)(vii), and a one-time written update regarding the collective's operations in 2021.

(b) *Contents.* Each of the mechanical licensing collective's annual reports shall contain, at a minimum, the following information:

(1) The operational and licensing practices of the mechanical licensing collective;

(2) How the mechanical licensing collective collects and distributes royalties, including the average processing and distribution times for distributing royalties for the preceding calendar year. The mechanical licensing collective shall disclose how it calculated processing and distribution times for distributing royalties for the preceding calendar year;

(3) Budgeting and expenditures for the mechanical licensing collective;

(4) The mechanical licensing collective's total costs for the preceding calendar year;

(5) The projected annual mechanical licensing collective budget;

(6) Aggregated royalty receipts and payments;

(7) Expenses that are more than 10 percent of the annual mechanical licensing collective budget;

(8) The efforts of the mechanical licensing collective to locate and identify copyright owners of unmatched musical works (and shares of works);

(9) The mechanical licensing collective's selection of board members and criteria used in selecting any new board members during the preceding calendar year;

(10) The mechanical licensing collective's selection of new vendors during the preceding calendar year, including the criteria used in deciding to select such vendors, and key findings from any performance reviews of the mechanical licensing collective's current vendors. Such description shall include a general description of any new request for information (RFI) and/or request for proposals (RFP) process, either copies of the relevant RFI and/or RFP or a list of the functional requirements covered in the RFI or RFP, the names of the parties responding to the RFI and/or RFP. In connection with the disclosure described in this paragraph (b)(10), the mechanical licensing collective shall not be required to disclose any confidential or sensitive business information. For the purposes of this paragraph (b)(10), ''vendor'' means any vendor performing materially significant technology or operational services related to the mechanical licensing collective's matching and royalty accounting activities;

(11) Whether during the preceding calendar year the mechanical licensing collective, pursuant to 17 U.S.C. 115(d)(7)(C), applied any unclaimed accrued royalties on an interim basis to defray costs in the event that the administrative assessment is inadequate to cover collective total costs, including the amount of unclaimed accrued royalties applied and plans for future reimbursement of such royalties from future collection of the assessment; and

(12) Whether during the preceding calendar year the mechanical licensing collective suspended access to the public database to any individual or entity attempting to bypass the collective's right to charge a fee to recover its marginal costs for bulk access outlined in 17 U.S.C. 115(d)(3)(E)(v)(V) through repeated queries, or to otherwise be engaging in unlawful activity with respect to the database (including, without limitation, seeking to hack or unlawfully access confidential, non-public information contained in the database) or misappropriating or using information from the database for improper

purposes. If the mechanical licensing collective so suspended access to the public database to any individual or entity, the annual report must identify such individual(s) and entity(ies) and provide the reason(s) for suspension.

(c) *December 31, 2021 Update.* No later than December 31, 2021, the mechanical licensing collective shall post, and make available online for a period of not less than three years, a one-time written report that contains, at a minimum, the categories of information required in paragraph (b) of this section, addressing activities following the license availability date. If it is not practicable for the mechanical licensing collective to provide information in this one-time report regarding a certain category of information required under paragraph (b) of this section, the MLC may so state but shall explain the reason(s) for such impracticability and, as appropriate, may address such categories in an abbreviated fashion.

[85 FR 86822, Dec. 31, 2020]

§ 210.34 Treatment of confidential and other sensitive information.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective and digital licensee coordinator shall ensure that confidential, private, proprietary, or privileged information received by the mechanical licensing collective or digital licensee coordinator or contained in their records is not improperly disclosed or used, in accordance with 17 U.S.C. 115(d)(12)(C), including with respect to disclosure or use by the board of directors, committee members, and personnel of the mechanical licensing collective or digital licensee coordinator.

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

(1) ''Confidential Information'' means sensitive financial or business information, including trade secrets or information relating to financial or business terms that could cause competitive disadvantage or be used for commercial advantage, disclosed by digital music providers, significant non-blanket licensees, and copyright owners (or any of their authorized agents or vendors) to the mechanical licensing collective or digital licensee coordinator. ''Confidential Information'' also means sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth.

(i) ''Confidential Information'' specifically includes usage data and other sensitive data used to compute market shares when distributing unclaimed accrued royalties, sensitive data provided by digital music providers related to royalty calculations, sensitive data shared between the mechanical licensing collective and digital licensee coordinator regarding any significant nonblanket licensee, sensitive data concerning voluntary licenses or individual download licenses administered by and/or disclosed to the mechanical licensing collective, and sensitive data concerning agreements between sound recording companies and digital music providers. ''Confidential information'' also includes sensitive financial or business information disclosed to the mechanical licensing collective or digital licensee coordinator by a third party that is reasonably designated as confidential by the party disclosing the information, subject to the other provisions of this section.

(ii) ''Confidential Information'' does not include:

(A) Information that is public or may be made public by law or regulation, including but not limited to information made publicly available through:

(*1*) Notices of license, excluding any addendum that provides a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license.

(*2*) Notices of nonblanket activity, information in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and information disclosable through the mechanical licensing collective's bylaws, annual report, audit report, or the mechanical licensing collective's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii),(vii), and (ix).

(B) Information that at the time of delivery to the mechanical licensing collective or digital licensee coordinator is public knowledge, or is subsequently publicly disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the mechanical licensing collective or digital licensee coordinator based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(C) Top-level compilation data presented in anonymized format that does not allow identification of such data as belonging to any specific digital music provider, significant nonblanket licensee, or copyright owner.

(2) ''MLC Internal Information'' means sensitive financial or business information created by or collected by the mechanical licensing collective for purposes of its internal operations, such as personnel, procurement, or technology information. ''MLC Internal Information'' does not include:

(i) Information that is public or may be made public by law or regulation, information in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and information in the mechanical licensing collective's bylaws, annual report, audit report, or the mechanical licensing collective's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii), (vii), and (ix); or

(ii) Information that at the time of delivery to the mechanical licensing collective is public knowledge, or is subsequently publicly disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the mechanical licensing collective based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(3) ''DLC Internal Information'' means sensitive financial or business information created by or collected by the digital licensee coordinator for purposes of its internal operations, such as personnel, procurement, or technology information. ''DLC Internal Information'' does not include:

(i) Information that is public or may be made public by law or regulation, information in the public musical works database prescribed by 17 U.S.C. 115(d)(3)(E), and information disclosable through the digital licensee coordinator's bylaws; or

(ii) Information that at the time of delivery to the digital licensee coordinator is public knowledge, or is subsequently publicly disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the digital licensee coordinator based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(c) *Disclosure of Confidential Information.* (1) The mechanical licensing collective shall limit disclosure of Confidential Information to employees, agents, consultants, vendors, and independent contractors of the mechanical licensing collective who are engaged in the collective's authorized functions under 17 U.S.C. 115(d) and activities related directly thereto and who require access to Confidential Information for the purpose of performing their duties during the ordinary course of their work for the mechanical licensing collective, subject to an appropriate written confidentiality agreement. The mechanical licensing collective shall not disclose Confidential Information to members of the mechanical licensing collective's board of directors and committees, including the collective's Unclaimed Royalties Oversight Committee, or the digital licensee coordinator's board of directors or committees.

(2) Notwithstanding paragraph (c)(1) of this section, the mechanical licensing collective shall be permitted to fulfill its disclosure obligations under section 115 including, but not limited to:

(i) Providing monthly reports to the digital licensee coordinator setting forth any significant nonblanket licensees of which the collective is aware that have failed to comply with the Office's regulations regarding submission of a notice of nonblanket activity for purposes of notifying the mechanical licensing collective that the licensee

has been engaging in covered activities, or regarding the delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works; and

(ii) Preparing and delivering royalty statements to musical work copyright owners that include the minimum information required in accordance with 37 CFR 210.29(c), but without including additional Confidential Information that does not relate to the recipient copyright owner or relevant songwriter. Once a copyright owner receives a royalty statement from the mechanical licensing collective, there are no restrictions on the copyright owner's ability to use the statement or disclose its contents.

(A) Members of the mechanical licensing collective's board of directors and committees shall not have access to musical work copyright owners' royalty statements, except where a copyright owner discloses their own royalty statement to the members of the mechanical licensing collective's board of directors or committees. Notwithstanding this paragraph, members of the mechanical licensing collective's board and committees are not restricted in accessing their own royalty statements from the mechanical licensing collective.

(B) The digital licensee coordinator, including members of the digital licensee coordinator's board of directors and committees, shall not have access to musical work copyright owners' royalty statements, except where a copyright owner discloses their own royalty statement to the mechanical licensing collective's board of directors or committees.

(3) The digital licensee coordinator shall limit disclosure of Confidential Information to employees, agents, consultants, vendors, and independent contractors of the digital licensee coordinator who are engaged in the digital licensee coordinator's authorized functions under 17 U.S.C. 115(d)(5)(C) and activities related directly thereto and require access to Confidential Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement. The digital licensee coordinator shall not disclose Confidential Information to members of the digital licensee coordinator's board of directors and committees, or the mechanical licensing collective's board of directors or committees.

(4) In addition to the permitted disclosure of Confidential Information in this paragraph (c), the mechanical licensing collective and digital licensee coordinator may disclose Confidential Information to:

(i) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(4)(D), who is authorized to act on behalf of the mechanical licensing collective with respect to verification of royalty payments by a digital music provider operating under the blanket license, subject to an appropriate written confidentiality agreement;

(ii) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(3)(L), who is authorized to act on behalf of a copyright owner or group of copyright owners with respect to verification of royalty payments by the mechanical licensing collective, subject to an appropriate written confidentiality agreement; and

(iii) Attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement.

(5) With the exception of persons receiving information pursuant to paragraph (c)(4) of this section, anyone to whom the mechanical licensing collective or digital licensee coordinator discloses Confidential Information as permitted in section shall not disclose such Confidential Information to anyone else except as expressly permitted in this section.

(d) *Use of Confidential Information.* (1) The mechanical licensing collective shall not use any Confidential Information for any purpose other than the collective's authorized functions under 17 U.S.C. 115(d) and activities related directly thereto. Anyone to whom the mechanical licensing collective discloses Confidential Information as permitted in this section shall not use any

Confidential Information for any purpose other than in performing their duties during the ordinary course of their work for the mechanical licensing collective or as otherwise permitted under paragraph (c)(4) of this section.

(2) The digital licensee coordinator shall not use any Confidential Information for any purpose other than its authorized functions under 17 U.S.C. 115(d)(5)(C) and activities related directly thereto. Anyone to whom the digital licensee coordinator discloses Confidential Information as permitted in this section shall not use any Confidential Information for any purpose other than in performing their duties during the ordinary course of their work for the digital licensee coordinator or as otherwise permitted under paragraph (c)(4) of this section.

(e) *Disclosure and Use of MLC Internal Information and DLC Internal Information.* (1) The mechanical licensing collective may disclose MLC Internal Information to members of the mechanical licensing collective's board of directors and committees, including representatives of the digital licensee coordinator who serve on the board of directors or committees of the mechanical licensing collective, subject to an appropriate written confidentiality agreement. The MLC may also disclose MLC Internal Information to other individuals in its discretion, subject to the adoption of reasonable confidentiality policies.

(2) Representatives of the digital licensee coordinator who serve on the board of directors or committees of the mechanical licensing collective and receive MLC Internal Information may share such MLC Internal Information with the following persons:

(i) Employees, agents, consultants, vendors, and independent contractors of the digital licensing coordinator who require access to MLC Internal Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement;

(ii) Individuals serving on the board of directors and committees of the digital licensee coordinator or mechanical licensing collective who require access to MLC Internal Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator or mechanical licensing collective, subject to an appropriate written confidentiality agreement;

(iii) Individuals otherwise employed by members of the digital licensee coordinator who require access to MLC Internal Information for the purpose of performing their duties during the ordinary course of their work for the digital licensee coordinator, subject to an appropriate written confidentiality agreement.

(3) The digital licensee coordinator may disclose DLC Internal Information to the following persons:

(i) Members of the digital licensee coordinator's board of directors and committees, subject to an appropriate written confidentiality agreement; and

(ii) Members of the mechanical licensing collective's board of directors and committees, including music publisher representatives, songwriters, and representatives of the digital licensee coordinator who serve on the board of directors or committees of the mechanical licensing collective, subject to an appropriate written confidentiality agreement.

(iii) The DLC may also disclose DLC Internal Information to other individuals in its discretion, subject to the adoption of reasonable confidentiality policies.

(f) *Safeguarding Confidential Information.* The mechanical licensing collective, digital licensee coordinator, and any person or entity authorized to access Confidential Information from either of those entities as permitted in this section, must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information. The mechanical licensing collective and digital licensee coordinator shall each implement and enforce reasonable policies governing the confidentiality of their records, subject to the other provisions of this section.

(g) *Maintenance of records.* Any written confidentiality agreements relating to the use or disclosure of Confidential Information must be maintained and stored by the relevant parties until at least seven years after disclosures cease to be made pursuant to them.

(h) *Confidentiality agreements.* The use of confidentiality agreements by the mechanical licensing collective and digital licensee coordinator shall not be inconsistent with the other provisions of this section.

[86 FR 9019, Feb. 11, 2021]

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.
211.7 Reconsideration procedure for refusals to register.

AUTHORITY: 17 U.S.C. 702, 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., should be sent to the address specified in § 201.1(b) of this chapter.

(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.

[50 FR 26719, June 28, 1985, as amended at 82 FR 9365, Feb. 6, 2017]

§ 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.

[50 FR 26719, June 28, 1985, as amended at 66 FR 34373, June 28, 2001]

§ 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. Copies of the form are available free from the Copyright Office website or upon request to the Copyright Information Section, U.S. Copyright Office, Library of Congress, Washington, DC 20559– 6000.

(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 regulations. 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 typed, printed, or handwritten signature of the applicant, accompanied by the typed or printed name of that person if the signature is handwritten.

(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 for one mask work.* Subject to the exceptions specified in paragraph (c)(2) of this section, for purposes of registration on one application and upon payment of one filing fee, the following shall be considered one 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 work 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) of this section, 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) *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; 64 FR 36575, July 7, 1999; 66 FR 34374, June 28, 2001; 73 FR 37840, July 2, 2008; 82 FR 9365, Feb. 6, 2017; 83 FR 66630, Dec. 27, 2018]

§ 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 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.

(2) The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an $8\frac{1}{2} \times 11$ 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.

(3) 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 $8\frac{1}{2} \times 11$ 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 paragraphs (b)(1) and (2) 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 paragraphs (b)(1)(i), (ii), or (iii) and (b)(2) 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.* (i) For mask works not commercially exploited falling under paragraph (b)(3)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(3) of this section, ''identifying portions'' shall mean:

(A) 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

(B) Visually perceptible representations in accordance with paragraph (b)(3)(i) 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.

(ii) 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 Associate Register of Copyrights and Director of Registration Policy and Practice, P.O. Box 70400, Washington, DC 20024–0400, 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; 73 FR 37840, July 2, 2008; 76 FR 27898, May 13, 2011; 82 FR 9365, Feb. 6, 2017]

§ 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 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]

§ 211.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register mask works under 17 U.S.C. chapter 9, unless otherwise required by this part.

[69 FR 77637, Dec. 28, 2004]

PART 212—PROTECTION OF VESSEL DESIGNS

Sec.

212.1 Scope.
212.2 Fees.
212.3 Registration of claims for protection of eligible designs.
212.4 Affixation and placement of design notice.
212.5 Recordation of distinctive identification of vessel designer.
212.6 Recordation of transfers and other documents.
212.7 Reconsideration procedure for refusals to register.
212.8 Correction of errors in certificates of registration.

AUTHORITY: 17 U.S.C. chapter 13.

SOURCE: 64 FR 36578, July 7, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 212 appear at 82 FR 9366, Feb. 6, 2017.

§ 212.1 Scope.

The provisions of this part apply to the protection and registration of original designs of vessels under chapter 13 of title 17, United States Code. Design protection and registration under this part are separate from copyright protection and registration. Copyright registration is governed by the provisions of part 202 of this subchapter.

[64 FR 36578, July 7, 1999, as amended at 82 FR 9366, Feb. 6, 2017]

§ 212.2 Fees.

Services related to registration of original designs of vessels are subject to fees prescribed in §§ 201.3(c) and (d).

[71 FR 31092, June 1, 2006, as amended at 82 FR 9366, Feb. 6, 2017]

§ 212.3 Registration of claims for protection of eligible designs.

(a) *Limitations.* Protection is not available for, and an application for registration will not be accepted for:

(1) An otherwise eligible design made public prior to October 28, 1998;

(2) An otherwise eligible design made public on a date more than two years prior to the filing of an application for registration under this section;

(3) A design ineligible for any of the reasons set forth in 17 U.S.C. 1302.

(b) *Required elements of application.* An application is considered filed with the Copyright Office on the date on which the following three items have been received by the Copyright Office:

(1) Completed Form D-VH;

(2) Deposit material identifying the design or designs for which registration is sought; and

(3) The appropriate fee.

(c) *Application by owner of design.* An application for registration under this section may be made only by the owner or owners of the design, or by the duly authorized agent or representative of the owner or owners of the design.

(d) *Application form.* Registration must be made on Form D-VH. Forms are available from the Copyright Office and may be reprinted from the Copyright Office's website (*http://www.loc.gov/copyright/forms/formdvh.pdf*).

(e) *Deposit material*—(1) *In General.* Identification of the design to be registered may be made in the form of drawings or photographs. No more than two drawings or photographs of the design may appear on a single sheet. Applicants may submit up to three 8½″ × 11″ sheets containing drawings or photographs as part of the basic application fee. An additional fee shall be assessed for each page beyond the first three pages. No combinations of drawings and photographs may be submitted on a single sheet. The drawings or photographs that accompany the application must reveal those aspects of the design for which protection is claimed. The registration extends only to those aspects of the design which are adequately shown in the drawings or photographs.

(2) *Views.* The drawings or photographs submitted should contain a sufficient number of views to make an adequate disclosure of the appearance of the design, *i.e.*, front, rear, right and left sides, top and bottom. While not required, it is suggested that perspective views be submitted to show clearly the appearance and shape of the three dimensional designs.

(3) *Drawings.* (i) Drawings must be in black ink on white 8½″ × 11″ unruled paper. A drawing of a design should include appropriate surface shading which shows clearly the character and contour of all surfaces of any 3-dimensional aspects of the design. Surface shading is also necessary to distinguish between any open and solid areas of the design. Solid black surface shading is not permitted except when used to represent the black color as well as color contrast.

(ii) The use of broken lines in drawings depicting the design is understood to be for illustrative purposes only and forms no part of the claimed design. Structure that is not part of the design, but that is considered necessary to show the environment in which the design is used, may be represented in the drawing by broken lines. This includes any portion of the vessel in which the design is embodied or applied that is not considered part of the design. When the claimed design is only surface ornamentation to the vessel, the vessel in which it is embodied must be shown in broken lines.

(iii) When broken lines are used, they should not intrude upon or cross the depiction of the design and should not be of heavier weight than the lines used in depicting the design. Where a broken line showing of environmental structure must necessarily cross or intrude upon the representation of the design and obscure a clear understanding of the design, such an illustration should be included as a separate figure, in addition to other figures which fully disclose the subject matter of the design.

(4) *Photographs.* High quality black and white or color photographs will be accepted provided that they are mounted on plain white 8½″ × 11″ unlined paper and do not exceed two photographs per sheet. Photographs must be developed on double weight photographic paper and must be of sufficient quality so that all the details of the design are plainly visible and are capable of reproduction on the registration certificate, if issued.

(f) *Multiple claims*—(1) *In general.* Claims for more than one design may be filed in one of two ways. If multiple designs are contained on the same make and model of a vessel (and therefore, the information in Space 1 of Form D-VH—the make and model of the vessel that embodies the design—is the same for each design), one application form may be used to register all the designs, provided that the information in spaces 3 through 9 is the same for each design. If multiple designs are contained on more than one make and model of a vessel, or the information in spaces 3 through 9 is not the same for each of the multiple designs, then separate applications must be used for each design.

(2) *One application.* Where one application for multiple designs is appropriate, a separate Form D–VH/CON must be used for each design beyond the first appearing on Form D–VH. Each Form D–VH/CON must be accompanied by deposit material identifying the design that is the subject of the Form D–VH/CON, and the deposit material must be attached to the Form D–VH/CON. The Form D–VH and all the

Form D–VH/CONs for the application must be submitted together.

(3) *Multiple applications.* Where multiple applications for more than one design are required, a Form D-VH must be completed for each design. Deposit material identifying the design must accompany each application. Multiple applications may be filed separately.

(4) *Fees.* The basic application fee prescribed in § 201.3(c) of this chapter applies to each design submitted, regardless of whether one application or multiple applications are used.

(g) *Written declaration.* In lieu of the oath required by 17 U.S.C. 1312(a), the application shall contain a written declaration, as permitted by 17 U.S.C. 1312(b), signed by the applicant, or the applicant's duly authorized agent or representative. If the design has been made public with the design notice prescribed in 17 U.S.C. 1306, the written declaration shall also describe the exact form and position of the design notice. The written declaration shall read as follows:

> The undersigned, as the applicant or the applicant's duly appointed agent or representative, being hereby warned that willful false statements are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this application or any resulting registration, hereby declares to the best of his/her knowledge and belief:
>
> (1) That the design has been fixed in a useful article;
>
> (2) That the design is original and was created by the designer(s), or employer if applicable, named in the application;
>
> (3) That those aspects of the design for which registration is sought are not protected by a design patent;
>
> (4) That the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and
>
> (5) That the applicant is the person entitled to protection and to registration under chapter 13 of title 17, United States Code.

(h) *Priority claims.* An applicant seeking the benefit of 17 U.S.C. 1311 because the applicant has, within the previous six months, filed an application for protection of the same design in a foreign country, must provide:

(1) Identification of the filing date of the foreign application;

(2) Identification of the foreign country in which the application was filed;

(3) The serial number or any other identifying number of the foreign application;

(4) A certified copy of the foreign application;

(5) A translation of the foreign application and a statement, signed by the translator, that the translation is accurate, if the foreign application is in a language other than English; and

(6) If requested by the Copyright Office, proof that the foreign country in which the prior application was filed extends to designs of owners who are citizens of the United States, or to applications filed under chapter 13 of title 17, United States Code, similar protection to that provided under chapter 13 of title 17, United States Code.

(i) *Effective date of registration.* The effective date of registration is the date of publication of the registration by the Copyright Office.

(j) *Publication of registration.* Publication of registrations of vessel designs shall be made on the Copyright Office website (*http://www.loc.gov/copyright/vessels*).

[64 FR 36578, July 7, 1999, as amended at 72 FR 33692, June 19, 2007; 82 FR 9366, Feb. 6, 2017; 83 FR 66630, Dec. 27, 2018]

§ 212.4 Affixation and placement of design notice.

(a) *General.* (1) This section specifies the methods of affixation and placement of the design notice required by 17 U.S.C. 1306. Sections 1306 and 1307 govern the circumstances under which a design notice must be used and the effect of omission of a design notice. A notice deemed acceptable under this part shall be considered to satisfy the requirements of section 1306 that it be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce. As provided in that section, the examples specified in this part shall not be considered exhaustive of the methods of affixation and locations giving reasonable notice of the claim of protection in the design.

(2) The acceptability of a design notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in

such a manner and position that, when affixed, it may be viewed upon reasonable examination. There is no requirement that a design notice be permanently embossed or engraved into a vessel hull or deck, but it should be affixed in such a manner that, under normal conditions of use, it is not likely to become unattached or illegible.

(b) *Elements of a design notice.* If the design has been registered, the registration number may be included in the design notice in place of the year of the date on which protection for the design commenced and the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner. The elements of a design notice shall consist of:

(1) The words ''Protected Design'', the abbreviation ''Prot'd Des.'', or the letter ''D'' within a circle, or the symbol *D*;

(2) The year of the date on which protection for the design commenced; and

(3) The name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

(c) *Distinctive identification.* Any distinctive identification of an owner may be used for purposes of paragraph (b)(3) of this section if it has been recorded by the Register of Copyrights pursuant to §212.5 before the design marked with such identification is registered.

(d) *Acceptable locations of notice.* The following are acceptable means of affixing and placement of a design notice:

(1) In close proximity to the identification number required by 33 CFR 181.23;

(2) In close proximity to the driver's console such that it is in plain view from the console;

(3) If the vessel is twenty feet in length or less and is governed by 33 CFR 183.21, in close proximity to the capacity marking; and

(4) In close proximity to the make and/or model designation of the vessel.

[64 FR 36578, July 7, 1999, as amended at 82 FR 9366, Feb. 6, 2017]

§212.5 Recordation of distinctive identification of vessel designer.

(a) *General.* Any owner of a vessel design may record a distinctive identification with the Register of Copyrights for purposes of using such distinctive identification in a design protection notice required by 17 U.S.C. 1306. A distinctive identification of an owner may not be used in a design notice before it has first been recorded with the Register.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording distinctive identifications of ownership of a vessel design. However, persons recording distinctive identifications are encouraged to use the suggested format available on the Copyright Office website (*http://www.loc.gov/copyright/vessels*).

(c) *Recording distinctive identifications.* Any distinctive identification of an owner of a vessel design may be recorded with the Register of Copyrights provided that a document containing the following is submitted:

(1) The name and address of the owner;

(2) A statement of the owner that he/she is entitled to use the distinctive identification;

(3) A statement or depiction of the identification; and

(4) The recordation fee in the amount prescribed in §201.3(c) of this chapter.

(d) The document should be mailed to the address specified in §201.1(b)(2) of this chapter.

[64 FR 36578, July 7, 1999, as amended at 67 FR 38005, May 31, 2002; 72 FR 33692, June 19, 2007; 82 FR 9366, Feb. 6, 2017]

§212.6 Recordation of transfers and other documents.

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 the protection of vessel designs under 17 U.S.C. chapter 13.

[64 FR 36578, July 7, 1999, as amended at 82 FR 9366, Feb. 6, 2017]

§ 212.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register vessel designs under 17 U.S.C. chapter 13, unless otherwise required by this part.

[69 FR 77637, Dec. 28, 2004]

§ 212.8 Correction of errors in certificates of registration.

(a) *General.* (1) This section prescribes conditions relating to the correction of clerical or typographical errors in a certificate of registration of a vessel design, under section 1319 of title 17 of the United States Code, as amended by Public Law 105–304.

(2) For the purposes of this section, a *basic registration* means registration of a vessel design made under sections 1310 through 1314 of title 17 of the United States Code, as amended by Public Law 105–304.

(3) No correction of the information in a basic registration will be made except pursuant to the provisions of this § 212.8. As an exception, where it is discovered that the record of a vessel design registration contains a clerical or typographical error made by the Copyright Office, the Office will take appropriate measures to rectify its error. Correction will be made only of clerical or typographical errors; errors of a different nature cannot be corrected and there is no procedure to amplify the registration record with additional information.

(b) *Application for correction of error in certificate.* At any time after registration of a vessel design, the Copyright Office will correct a clerical or typographical error in the registration upon the application of the owner of the registered design or the owner's authorized agent.

(c) *Form and content of application to correct registration.* (1) An application to correct a registration shall be made on a form prescribed by the Copyright Office, shall be accompanied by the appropriate filing fee identified in § 201.3(c) and shall contain the following information:

(i) The make and model of the vessel that embodies the registered design;

(ii) The registration number of the basic registration;

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

(iv) The name or names of the designer or designers of the vessel design, and the owner or owners of the vessel design, as they appear in the basic registration;

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

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

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

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

(ix) The name and address:

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

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

(x) The certification shall consist of:

(A) The typed, printed, or handwritten signature of the owner of the registered design or of the duly authorized agent of such owner (who shall also be identified);

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

(C) A statement that the person signing the application is the owner of the registered design or of the duly authorized agent of such 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 to Correct a Design Registration (Form DC)''. 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 or on the Copyright Office website at *http://www.copyright.gov/forms/formdc.pdf*.

(3) Copies, phonorecords or supporting documents cannot be made

part of the record of a corrected certificate of registration and should not be submitted with the application.

(d) *Fee.* The filing fee for an application to correct a certificate of registration of a vessel design is prescribed in § 201.3(c).

[71 FR 46402, Aug. 14, 2006, as amended at 82 FR 9366, Feb. 6, 2017; 83 FR 66630, Dec. 27, 2018]

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EDITORIAL NOTE: This listing is provided for informational purposes only. It is compiled and kept current by the Library of Congress. This index is updated as of July 1, 2022.

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SUBCHAPTER B—COPYRIGHT CLAIMS BOARD AND PROCEDURES

PART 220—GENERAL PROVISIONS

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220.1 Definitions.
220.2 Authority and functions.
220.3 Copyright Claims Board Handbook.
220.4 Timing.
220.5 Requests, responses, and written submissions.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30075, May 17, 2022, unless otherwise noted.

§ 220.1 Definitions.

For purposes of this subchapter:

(a) *Active proceeding* denotes a claim in which the claimant has filed proof of service and the respondent has not, within the sixty day opt-out period, submitted an opt-out notice to the Copyright Claims Board (Board).

(b) *Authorized representative* means a person, other than legal counsel, who is authorized under this subchapter to represent a party before the Board.

(c) *Bad-faith conduct* occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact. Such conduct includes any actions taken in support of a claim, counterclaim, or defense and may occur at any point during a proceeding before the Board, including before a proceeding becomes an *active proceeding*.

(d) *Default determination* is a *final determination* issued as part of the default procedures set forth in 17 U.S.C. 1506(u) when the respondent does not participate in those procedures.

(e) *Final determination* is a decision that concludes an *active proceeding* before the Board and is binding only on the participating parties. A *final determination* generally assesses the merits of the claims in the proceeding, except when issued to dismiss a claimant's claims for failure to prosecute.

(f) *Initial notice* means the notice described in 17 U.S.C. 1506(g) that is served on a respondent in a Board proceeding along with the claim.

(g) *Second notice* means the notice of a proceeding sent by the Board as described in 17 U.S.C. 1506(h).

(h) *Standard interrogatories* are written questions provided by the Board that a party in an *active proceeding* must answer as part of discovery.

(i) *Standard requests for the production of documents* are written requests provided by the Board requiring a party to provide documents, other information, or tangible evidence as part of discovery in an *active proceeding*.

§ 220.2 Authority and functions.

The Copyright Claims Board (Board) is an alternative forum to Federal court in which parties may voluntarily seek to resolve certain copyright-related claims regarding any category of copyrighted work, as provided in chapter 15 of title 17 of the United States Code. The Board's proceedings are governed by title 17 of the United States Code and the regulations in this subchapter.

§ 220.3 Copyright Claims Board Handbook.

The Copyright Claims Board may issue a handbook explaining the Board's practices and procedures. The handbook may be viewed on, downloaded from, or printed from the Board's website. The handbook will not override any existing statute or regulation.

§ 220.4 Timing.

When the start or end date for calculating any deadline set forth in this subchapter falls on a weekend or a Federal holiday, the start or end date shall be extended to the next Federal workday. Any document subject to a deadline must be either submitted to the Board's electronic filing system (eCCB) by 11:59 p.m. Eastern Time on the date of the deadline or dispatched by the date of the deadline.

§ 220.5 Requests, responses, and written submissions.

(a) *Requests and responses submitted through fillable form.* Unless this subchapter provides otherwise or the Board orders otherwise, documents listed under this subsection shall be submitted through a fillable form on eCCB and shall comply with the following requirements:

(1) *Tier one requests and responses.* Requests and responses to requests which are identified under this paragraph (a)(1) shall be filed through the fillable form on eCCB and be limited to 4,000 characters. Any party may submit a response to a request identified in this paragraph within seven days of the filing of the request. The Board may deny such a request before the time to submit a response expires, but the Board will not grant a request before the time to submit a response expires, unless the request is consented to by all parties. There shall be no replies from a party that submits a request, absent leave of the Board. Tier one requests and responses shall include:

(i) Requests to amend a scheduling order and responses to such requests under § 222.11(d)(2) of this subchapter;

(ii) Requests for a general conference or discovery conference (those not involving a dispute) and responses to such requests under § 222.11(c), § 225.1(c), or § 226.4(g) of this subchapter;

(iii) Statements as to damages under § 222.15(b)(3) of this subchapter;

(iv) Requests for a hearing under § 222.16(c) of this subchapter;

(v) Requests to withdraw claims or counterclaims under § 222.17 of this subchapter;

(vi) Requests for a settlement conference and responses to such requests under § 222.18(b)(2) of this subchapter;

(vii) Requests to stay proceedings for settlement discussions or requests to extend the stay of proceedings for settlement discussions, and responses to such requests, under § 222.18(f) of this subchapter;

(viii) Joint requests for a dismissal under § 222.18(g) of this subchapter;

(ix) Requests for the standard protective order under § 222.19(a) of this subchapter;

(x) Requests to remove a confidentiality designation and responses to such requests under § 222.19(a)(5) of this subchapter;

(xi) Requests for a custom protective order under § 222.19(b) of this subchapter;

(xii) Requests to use not previously submitted evidence at a hearing and responses to such requests under § 222.20(d) of this subchapter;

(xiii) Requests to modify the discovery schedule and responses to such requests under § 225.1(b) of this subchapter;

(xiv) Requests to withhold additional documents as privileged and responses to such requests under § 225.3(g) of this subchapter;

(xv) Requests to issue a notice regarding a missed deadline or requirement and responses to such requests under § 227.1(a) or § 228.2(a) of this subchapter;

(xvi) Responses to a Board-issued notice regarding a missed deadline in the default context under § 227.1(c) of this subchapter;

(xvii) Responses to a Board-issued notice regarding a missed deadline in the failure to prosecute context under § 228.2(c)(2) of this subchapter;

(xviii) Requests to designate an official reporter for a hearing and responses to such requests under § 229.1(d) of this subchapter;

(xix) Requests to withdraw representation under § 232.5 of this subchapter; and

(xx) Requests not otherwise covered under § 220.5(d).

(2) *Tier two requests and responses.* Requests and responses to requests which are identified under this paragraph (a)(2) shall be filed through the fillable form on eCCB and be limited to 10,000 characters, not including any permitted attachments. Any party may file a response within 14 days of the filing of the request or the order to show cause. The Board may deny a request before the time to submit a response expires, but the Board will not grant a request before the time to submit a response expires, unless the request is consented to by all parties. There shall be no replies from a party that submits a request, absent leave of the Board. Tier two requests and responses shall include:

(i) Requests to amend pleadings and responses to such requests under § 222.12(d)(2) of this subchapter;

(ii) Requests to consolidate and responses to such requests under § 222.13(c) of this subchapter;

(iii) Requests to intervene by a third party and responses to such requests under § 222.14(c) of this subchapter;

(iv) Requests to dismiss for unsuitability and responses to such requests under § 224.2(c) of this subchapter;

(v) Requests for additional discovery under § 225.4(a)(4) of this subchapter. Such requests must enter each specific additional discovery request (*e.g.*, the specific interrogatories, document requests, or requests for admission sought) within the fillable form;

(vi) Responses to requests for additional discovery under § 225.4(a)(4) of this subchapter;

(vii) Requests to serve requests for admission and responses to requests to serve requests for admission under § 225.4(c) of this subchapter;

(viii) Requests to be able to present an expert witness and responses to such requests under § 225.4(b)(2) of this subchapter;

(ix) Requests for a conference to resolve a discovery dispute under § 225.5(b) of this subchapter. Such requests must attach any inadequate interrogatory responses or inadequate request for admission responses and may attach communications related to the discovery dispute or documents specifically discussed in the request related to the inadequacy of the document production;

(x) Responses to requests for a conference to resolve a discovery dispute under § 225.5(b) of this subchapter. Such responses may attach communications related to the discovery dispute or produced documents specifically pertinent to the dispute;

(xi) Requests for sanctions and responses to such requests under § 225.5(e)(1) of this subchapter;

(xii) Requests for a third-party to attend a hearing and responses to such requests under § 229.1(c) of this subchapter;

(xiii) Responses to an order to show cause regarding *bad-faith conduct* under § 232.3(b)(1) of this subchapter;

(xiv) Requests for a conference related to alleged *bad-faith conduct* and responses to such requests under § 232.3(b)(2) of this subchapter;

(xv) Responses to an order to show cause regarding a pattern of *bad-faith conduct* under § 232.4(b)(1) of this subchapter; and

(xvi) Requests for a conference related to a pattern of alleged *bad-faith conduct* and responses to such requests under § 232.4(b)(2) of this subchapter.

(b) *Tier three: Uploaded written submissions.* (1) Unless the Board orders otherwise, written submissions not identified as tier one or tier two requests and responses under this section shall be uploaded to eCCB (with the exception of settlement statements under § 222.18(d) of this subchapter), shall comply with the applicable page limitations and response times set forth in this subchapter for such documents, and shall—

(i) Include a title;

(ii) Include a caption;

(iii) Be typewritten;

(iv) Be double-spaced, except for headings, footnotes, or block quotations, which may be single-spaced;

(v) Be in 12-point type or larger; and

(vi) Include the typed or handwritten signature of the party submitting the document.

(2) Documents considered tier three submissions shall include:

(i) Direct party statements and response party statements under § 222.15(b)(3) of this subchapter;

(ii) Reply party statements under § 222.15(c)(3) of this subchapter;

(iii) Settlement position statements under § 222.18(d) of this subchapter;

(iv) Requests to reconsider determinations to dismiss for unsuitability and responses to such requests under § 224.2(b)(2) of this subchapter;

(v) Smaller claims position statements under § 226.4(d)(2)(ii) of this subchapter;

(vi) Responses to smaller claims Board-proposed findings of fact under § 226.4(e)(1);

(vii) Claimant written direct party statement in support of default under § 227.2(a) of this subchapter;

(viii) Claimant response to Board determination after default that evidence

is insufficient to find for claimant under §227.3(a)(2) of this subchapter;

(ix) Response to notice of proposed *default determination* under §227.4(a) of this subchapter;

(x) Requests to vacate a *default determination* and responses to such requests under §227.5(c) of this subchapter;

(xi) Request to vacate a dismissal for failure to prosecute and responses to such requests under §228.2(e) of this subchapter;

(xii) Requests for reconsideration under §230.2 of this subchapter;

(xiii) Responses to requests for reconsideration under §230.3 of this subchapter;

(xiv) Requests for review by the Register of Copyrights under §231.2 of this subchapter; and

(xv) Responses to requests for review by the Register of Copyrights under §231.3 of this subchapter.

(c) *Replies.* Other than written testimony submitted pursuant to §222.15 of this subchapter, replies to any responses to requests or written submissions shall not be permitted, unless otherwise provided for in this subchapter or permitted by the Board.

(d) *Other requests and responses.* Any requests to the Board not specified in this part can be submitted by filing a request not otherwise covered under paragraph (a)(1) of this section. Depending on the nature of the request, the Board shall advise the parties whether the request is permitted and, if so, if and by when the response must be filed.

[87 FR 30075, May 17, 2022; 87 FR 36060, June 15, 2022]

PART 221—REGISTRATION

Sec.
221.1 Registration requirement.
221.2 Small claims expedited registration.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 86 FR 46122, Aug. 18, 2021, unless otherwise noted.

§221.1 Registration requirement.

(a) A claim or counterclaim alleging infringement of an exclusive right in a copyrighted work may not be asserted before the Copyright Claims Board unless the legal or beneficial owner of the copyright has first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office and a registration certificate has either been issued or has not been refused.

(b) For a work that has not yet been registered, a claimant or counterclaimant who has a pending application to register the work must indicate on its claim or counterclaim notice that the work is pending registration and must include the work's service request (SR) number that was assigned to the copyright registration claim. If the Copyright Claims Board, in its discretion, at any time determines that the proceeding may not proceed forward because of a pending registration, the Copyright Claims Board shall issue an order holding the proceeding in abeyance until it is provided with the certificate of registration or the registration number on the certificate of registration or certificate preview. Under this provision, the Copyright Claims Board can decide to hold the proceeding in abeyance at any point in the proceeding, but must dismiss the proceeding without prejudice if it is notified that the registration application was refused. If the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days' written notice to all parties to the proceeding.

[86 FR 46122, Aug. 18, 2021, as amended at 87 FR 24058, Apr. 22, 2022]

§221.2 Small claims expedited registration.

(a) *Eligibility.* A claimant or counterclaimant alleging infringement of an exclusive right in a copyrighted work before the Copyright Claims Board is eligible to expedite a copyright registration application under this section. This process shall be known as small claims expedited registration.

(b) *Initiating small claims expedited registration.* The small claims expedited registration process can only be initiated after the claimant or counterclaimant has completed an application for copyright registration and either the Copyright Claims Board has issued an order holding the proceedings in

abeyance pursuant to § 221.1(b) and has granted the applicant permission to request an expedited registration or the proceeding has become active. To initiate the small claims expedited registration process, the qualifying claimant or counterclaimant must make a request and pay the required fee set forth in § 201.3(d). Parties must not attempt to initiate small claims expedited registration by using the Copyright Office's electronic registration system (eCO).

(c) *Fee*—(1) *Amount.* The small claims expedited registration fee for each request must be made for the appropriate amount, as prescribed in § 201.3(c). The fee for small claims expedited registration is intended to accelerate the registration process for a qualifying Copyright Claims Board claimant or counterclaimant that already has a pending registration application; it is in addition to, and does not offset, the fee for copyright registration.

(2) *Method of payment.* (i) The fee for small claims expedited registration must be submitted electronically to the Copyright Claims Board and not through the Copyright Office's electronic registration system (eCO).

(ii) A claimant or counterclaimant shall follow instructions on the Copyright Office website to make electronic payments by *Pay.gov*. Applicants may not use a deposit account to make payments for small claims expedited registration.

(3) *No refunds.* The small claims expedited registration fee is not refundable, unless the small claims expedited registration request is denied under paragraph (d) of this section.

(d) *Denied requests.* If the applicant failed to pay the required fee or if the Copyright Office determines that expedited registration under this section would be unduly burdensome based on the Office's workload or budget at the time the request is made, the Office will notify the applicant that the request has been denied and that the copyright registration claim will be examined on a regular basis.

(e) *Granted requests.* If the request for expedited registration under this section is granted, the Office will make every attempt to examine the application within 10 business days after notice of the request is delivered by the Copyright Claims Board to the Copyright Office's Office of Registration Policy and Practice, although the Copyright Office cannot guarantee that all applications will be examined within that timeframe.

(f) *Identical registration standards.* The Copyright Office will apply the same practices and procedures when examining a copyright registration claim, regardless of whether the applicant asks for small claims expedited registration.

[86 FR 46122, Aug. 18, 2021, as amended at 87 FR 24058, Apr. 22, 2022]

PART 222—PROCEEDINGS

Sec.

222.1 Applicability of the Federal Rules of Civil Procedure and Federal Rules of Evidence.
222.2 Initiating a proceeding; the claim.
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222.20 Evidence.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 12865, Mar. 8, 2022, unless otherwise noted.

§ 222.1 Applicability of the Federal Rules of Civil Procedure and Federal Rules of Evidence.

The rules of procedure and evidence governing proceedings before the Copyright Claims Board (Board) are set forth in this subchapter. The Board is not bound by the Federal Rules of Civil Procedure or the Federal Rules of Evidence.

[87 FR 30077, May 17, 2022]

§ 222.2 Initiating a proceeding; the claim.

(a) *Initiating a proceeding.* A claimant may initiate a proceeding before the Copyright Claims Board (Board) by submitting the following—

(1) A completed claim form provided by the Board; and

(2) The first payment of the filing fee set forth in 37 CFR 201.3(g).

(b) *Electronic filing requirement.* Except as provided otherwise in § 222.5(f), to submit the claim and the first payment of the filing fee, the claimant must be a registered user of the Board's electronic filing system (eCCB).

(c) *Contents of the claim.* The claim shall include:

(1) Identification of the claim(s) asserted against the respondent(s), which shall consist of at least one of the following:

(i) A claim for infringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106;

(ii) A claim for a declaration of noninfringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106; or

(iii) A claim under 17 U.S.C. 512(f) for misrepresentation in connection with—

(A) A notification of claimed infringement; or

(B) A counter notification seeking to replace removed or disabled material;

(2) The name(s) and mailing address(es) of the claimant(s);

(3) For any claimant that is represented by legal counsel or an *authorized representative*, the name(s), mailing address(es), email address(es), and telephone number(s) of such claimant's legal counsel or *authorized representative;*

(4) For any claimant that is not represented by legal counsel or an *authorized representative*, the email address and telephone number of such claimant;

(5) The name(s) of the respondent(s);

(6) The mailing address(es) of the respondent(s), unless the claimant(s) certifies that a respondent's address is unknown at the time to the claimant and that the claimant has a good-faith belief that the statute of limitations for the claim is likely to expire within 30 days from the date that the claim is submitted, and describes the basis for that good-faith belief;

(7) For an infringement claim asserted under paragraph (c)(1)(i) of this section—

(i) That the claimant is the legal or beneficial owner of rights in a work protected by copyright and, if there are any co-owners, their names;

(ii) The following information for each work at issue in the claim:

(A) The title of the work;

(B) The author(s) of the work;

(C) If a copyright registration has issued for the work, the registration number and effective date of registration;

(D) If an application for copyright registration has been submitted but a registration has not yet issued, the service request number (SR number) and application date; and

(E) The work of authorship category, as set forth in 17 U.S.C. 102, for each work at issue, or, if the claimant is unable to determine the applicable category, a brief description of the nature of the work; and

(iii) A description of the facts relating to the alleged infringement, including, to the extent known to the claimant:

(A) Which exclusive rights provided under 17 U.S.C. 106 are at issue;

(B) When the alleged infringement began;

(C) The name(s) of all person(s) or organization(s) alleged to have participated in the infringing activity;

(D) The facts leading the claimant to believe the work has been infringed;

(E) Whether the alleged infringement has continued through the date the claim was filed, or, if it has not, when the alleged infringement ceased;

(F) Where the alleged act(s) of infringement occurred (*e.g.*, a physical or online location); and

(G) If the claim of infringement is asserted against an online service provider as defined in 17 U.S.C. 512(k)(1)(B) for infringement by reason of the storage of or referral or linking to infringing material that may be subject to the limitations on liability set forth in 17 U.S.C. 512(b), (c), or (d), an affirmance that the claimant has previously notified the service provider of the claimed infringement in accordance with 17

U.S.C. 512(b)(2)(E), (c)(3), or (d)(3), as applicable, and that the service provider failed to remove or disable access to the material expeditiously upon the provision of such notice;

(8) For a declaration of noninfringement claim asserted under paragraph (c)(1)(ii) of this section—

(i) The name(s) of the person(s) or organization(s) asserting that the claimant has infringed a copyright;

(ii) The following information for each work alleged to have been infringed, if that information is known to the claimant:

(A) The title;

(B) If a copyright registration has issued for the work, the registration number and effective date of registration;

(C) If an application for copyright has been submitted, but a registration has not yet issued, the service request number (SR number) and registration application date; and

(D) The work of authorship category, as set forth in 17 U.S.C. 102, or, if the claimant is unable to determine which category is applicable, a brief description of the nature of the work;

(iii) A brief description of the claimant's activity at issue in the claim, including, to the extent known to the claimant:

(A) Any exclusive rights provided under 17 U.S.C. 106 that may be implicated;

(B) When the activities at issue began and, if applicable, ended;

(C) Whether the activities at issue have continued through the date the claim was filed;

(D) The name(s) of all person(s) or organization(s) who participated in the allegedly infringing activity; and

(E) Where the activities at issue occurred (*e.g.*, a physical or online location);

(iv) A brief statement describing the reasons why the claimant believes that no infringement occurred, including any relevant history or agreements between the parties and whether claimant currently believes any exceptions and limitations as set forth in 17 U.S.C. 107 through 122 are implicated; and

(v) A brief statement describing the reasons why the claimant believes that there is an actual controversy concerning the requested declaration;

(9) For a misrepresentation claim asserted under paragraph (c)(1)(iii) of this section—

(i) The sender of the notification of claimed infringement;

(ii) The recipient of the notification of claimed infringement;

(iii) The date the notification of claimed infringement was sent, if known;

(iv) A description of the notification;

(v) If a counter notification was sent in response to the notification—

(A) The sender of the counter notification;

(B) The recipient of the counter notification;

(C) The date the counter notification was sent, if known; and

(D) A description of the counter notification;

(vi) The words in the notification or counter notification that allegedly constituted a misrepresentation; and

(vii) An explanation of the alleged misrepresentation;

(10) For infringement claims and misrepresentation claims, a statement describing the harm suffered by the claimant(s) as a result of the alleged activity and the relief sought by the claimant(s). Such statement may, but is not required to, include an estimate of any monetary relief sought;

(11) Whether the claimant requests that the proceeding be conducted as a ''smaller claim'' under 17 U.S.C. 1506(z), and would accept a limitation on total damages of $5,000 if the request is granted; and

(12) A certification under penalty of perjury by the claimant, the claimant's legal counsel, or the claimant's *authorized representative* that the information provided in the claim is accurate and truthful to the best of the certifying person's knowledge and, if the certifying person is not the claimant, that the certifying person has confirmed the accuracy of the information with the claimant. The certification shall include the typed signature of the certifying person.

(d) *Additional matter.* The claimant may also include, as attachments to or

files accompanying the claim, any material the claimant believes plays a significant role in setting forth the facts of the claim, such as:

(1) A copy of the copyright registration certificate for a work that is the subject of the proceeding;

(2) A copy of the copyrighted work alleged to be infringed. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows where the allegedly infringed work has been posted;

(3) A copy of the allegedly infringing material. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows any allegedly infringing activity;

(4) For a misrepresentation claim, a copy of the notification of claimed infringement that is alleged to contain the misrepresentation;

(5) For a misrepresentation claim, a copy of the counter notification that is alleged to contain the misrepresentation;

(6) For a declaration of noninfringement claim, a copy of the demand letter(s) or other correspondence that created the dispute; and

(7) Any other exhibits that play a significant role in setting forth the facts of the claim.

(e) *Additional information required during claim submission.* In connection with the submission of the claim the claimant shall also provide—

(1) For any claimant that is represented by legal counsel or an *authorized representative*, the email address and telephone number of that claimant. Such information shall not be part of the claim; and

(2) Any further information that the Board may determine should be provided.

(f) *Respondent address requirement for claim submission.* Any claim for which a respondent's mailing address has not been provided pursuant to paragraph (c)(6) of this section shall not be found compliant under 37 CFR 224.1 unless the claimant provides the address of the respondent to the Board within 60 days of the date the claim was filed under paragraph (a) of this section. If the claimant does not provide a respondent address within that period of time, the Board may dismiss the claim without prejudice.

[87 FR 17000, Mar. 25, 2022]

§ 222.3 Initial notice.

(a) *Content of initial notice.* The Board shall prepare an *initial notice* for the claimant(s) to serve on each respondent that shall—

(1) Include on the first page a caption that provides the parties' names and includes the docket number assigned by the Board;

(2) Be addressed to the respondent;

(3) Provide the name(s) and mailing address(es) of the claimant(s);

(4) For any claimant that is represented by legal counsel or an *authorized representative*, provide the name(s), mailing address(es), email address(es), and telephone number(s) of such legal counsel or *authorized representative;*

(5) For any claimant that is not represented by legal counsel or an *authorized representative*, provide the email address and telephone number of that claimant;

(6) Advise the respondent that a legal proceeding that could affect the respondent's legal rights has been commenced by the claimant(s) in the Board against the respondent;

(7) Identify the nature of the claims asserted against the respondent, which shall consist of at least one of the following:

(i) A claim for infringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106;

(ii) A claim for a declaration of noninfringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106; and

(iii) A claim under 17 U.S.C. 512(f) for misrepresentation in connection with—

(A) A notification of claimed infringement; or

(B) A counter notification seeking to replace removed or disabled material;

(8) Describe the Board, including that it is a three-member tribunal within the Copyright Office that has been established by law to resolve certain copyright disputes in which the total monetary recovery does not exceed $30,000;

(9) State that the respondent has the right to opt out of participating in the proceeding, and that the consequence

of opting out is that the proceeding shall be dismissed without prejudice and the claimant shall have to determine whether to file a lawsuit in a Federal district court;

(10) State that if the respondent does not opt out within 60 days from the day the respondent received the *initial notice*, the proceeding shall go forward and the respondent shall—

(i) Lose the opportunity to have the dispute decided by the Federal court system, created under Article III of the Constitution of the United States; and

(ii) Waive the right to have a trial by jury regarding the dispute;

(11) State that the notice is in regard to an official Government proceeding and provide information on how to access the docket of the proceeding in eCCB;

(12) Provide information on how to become a registered user of eCCB;

(13) State that parties may represent themselves in the proceeding, but note that a party may wish to consult with legal counsel or with a law school clinic, and provide reference to pro bono resources (*i.e.*, legal services provided without charge for those services) which may be available and are listed on the Board's website;

(14) Indicate where other pertinent information concerning proceedings before the Board may be found on the Board's website;

(15) Provide direction on how a respondent may opt out of the proceeding, either online or by mail;

(16) In the case of a proceeding in which the claimant has requested under § 222.2(c)(1) that the proceeding be conducted as a smaller claim under 37 CFR part 226, include a statement that the proceeding shall be conducted as a smaller claim and a brief explanation of the differences between smaller claims proceedings and other proceedings before the Board; and

(17) Include any additional information that the Board may determine should be included.

(b) *Service of initial notice.* Following notification from the Board pursuant to 17 U.S.C. 1506(f)(1)(A) to proceed with service of the claim, the claimant shall cause the *initial notice*, the claim, the opt-out notification form, and any other documents required by the direction of the Board to be served with the *initial notice* and the claim, upon each respondent as prescribed in § 222.5(b) and 17 U.S.C. 1506(g). The copy of the claim that is served shall be of the claim that was found to be compliant under 37 CFR 224.1, and is, at the time of service, available on eCCB. The *initial notice*, the claim, the opt-out notification form, and any other document required by the Board shall not be accompanied by any additional substantive communications or materials, including without limitation settlement demands, correspondence purporting to describe the claim or the strength of the claim, or exhibits not filed with the claim, when served by the claimant(s).

[87 FR 17000, Mar. 25, 2022, as amended at 87 FR 30077, May 17, 2022]

§ 222.4 Second notice.

(a) *Content of second notice.* The *second notice* to the respondent shall—

(1) Include on the first page a caption that provides the parties' names and the docket number;

(2) Be addressed to the respondent, using the address that appeared in the *initial notice* or an updated address, if an updated address was provided to the Board prior to service of the *second notice;*

(3) Include the contact information for the claimant(s) and claimant's legal counsel or *authorized representative*, for any claimant represented by legal counsel or an *authorized representative;*

(4) Advise the respondent that a proceeding that could affect the respondent's legal rights has been commenced by the claimant(s) in the Board against the respondent;

(5) Identify the nature of the claims asserted against the respondent, which shall consist of at least one of the following:

(i) A claim for infringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106;

(ii) A claim for a declaration of noninfringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106; and

(iii) A claim under 17 U.S.C. 512(f) for misrepresentation in connection with—

(A) A notification of claimed infringement; or

(B) A counter notification seeking to replace removed or disabled material;

(6) Describe the Board, including that it is a three-member tribunal within the Copyright Office that has been established by law to resolve certain copyright disputes in which the total monetary recovery does not exceed $30,000;

(7) State that the respondent has the right to opt out of participating in the proceeding, and that the consequence of opting out is that the proceeding shall be dismissed and the claimant shall have to determine whether to file a lawsuit in a Federal district court;

(8) State that if the respondent does not opt out within 60 days from the day the respondent received the *initial notice*, the consequences are that the proceeding shall go forward and the respondent shall—

(i) Lose the opportunity to have the dispute decided by the Federal court system, created under Article III of the Constitution of the United States; and

(ii) Waive the right to have a trial by jury regarding the dispute;

(9) Provide information on how to access the docket of the proceeding in eCCB and how to become a registered user of that system;

(10) State that the notice is in regard to an official Government proceeding and provide information on how to access the docket of the proceeding eCCB;

(11) Provide information on how to become a registered user of eCCB;

(12) State that parties may represent themselves in the proceeding, but note that a party may wish to consult with legal counsel or with a law school clinic, and provide reference to pro bono resources (*i.e.*, legal services provided without charge for those services) which may be available and are listed on the Board's website;

(13) Indicate where other pertinent information concerning proceedings before the Board may be found on the Board's website;

(14) Provide direction on how a respondent may opt out of the proceeding, either online or by mail;

(15) Be accompanied by the documents described in § 222.3(b);

(16) In the case of a proceeding in which the claimant has requested under § 222.2(c)(1) that the proceeding be conducted as a smaller claim under 37 CFR part 226, include a statement that the proceeding shall be conducted as a smaller claim and a brief explanation of the differences between smaller claims proceedings and other proceedings before the Board; and

(17) Include any additional information or documents at the Board's direction.

(b) *Timing of second notice.* The Board shall issue the *second notice* in the manner prescribed by § 222.5(d)(2) no later than 20 days after the claimant files proof of service or a completed waiver of service with the Board, unless the respondent has already submitted an opt-out notification pursuant to 37 CFR 223.1.

[87 FR 17000, Mar. 25, 2022, as amended at 87 FR 30077, May 17, 2022]

§ 222.5 Service; waiver of service; filing.

(a) *In general.* Unless specified otherwise, all filings made by a party in CCB proceedings must be filed in eCCB. Except as provided elsewhere in this section, documents are served on a party who is a registered user of the eCCB and filed with the Board by submitting them to eCCB. Service is complete upon filing, but is not effective if the filer learns that it did not reach the person to be served.

(b) *Service of initial notice, claim, and related documents*—(1) *Timing of service.* A claimant may proceed with service of a claim only after the claim is reviewed by a Copyright Claims Attorney and the claimant is notified that the claim is compliant under 37 CFR 224.1.

(2) *Service methods.* (i) Service of the *initial notice*, the claim, and other documents required by this part or the Board to be served with the *initial notice* and claim shall be made as provided under 17 U.S.C. 1506(g), as supplemented by this section.

(ii) If a corporation, partnership, or unincorporated association has designated a service agent under 17 U.S.C. 1506(g)(5)(B) and § 222.6, service must be made by certified mail or by any other method that the entity specifies in its

designation under § 222.6 that it will accept.

(3) *Filing of proof of service.* (i) No later than the earlier of seven calendar days after service of the *initial notice* and all accompanying documents under paragraph (b) of this section and 90 days after receiving notification of compliance, a claimant shall file a completed proof of service form through eCCB. The proof of service form shall be located on the Board's website.

(ii) The claimant's failure to comply with the filing deadline in paragraph (b)(3)(i) of this section may constitute exceptional circumstances justifying an extension of the 60-day period in which a respondent may deliver an opt-out notification to the Board under 17 U.S.C. 1506(i).

(c) *Waiver of personal service*—(1) *Delivery of request for waiver of service.* A claimant may request that a respondent waive personal service as provided by 17 U.S.C. 1506(g)(6) by delivering, via first class mail, the following to the respondent:

(i) A completed waiver of personal service form provided on the Board's website;

(ii) The documents described in § 222.3, including the *initial notice* and the claim; and

(iii) An envelope, with postage prepaid and addressed to the claimant requesting the waiver or, for a claimant represented by legal counsel or an *authorized representative*, to that claimant's legal counsel or *authorized representative.*

(2) *Content of waiver of service request.* The request for waiver of service shall be prepared using a form provided by the Board that shall—

(i) Bear the name of the Board;

(ii) Include on the first page and waiver page the caption identifying the parties and the docket number;

(iii) Be addressed to the respondent;

(iv) Contain the date of the request;

(v) Notify the respondent that a legal proceeding has been commenced by the claimant(s) before the Board against the respondent;

(vi) Advise that the form is not a summons or official notice from the Board;

(vii) Request that respondent waive formal service of summons by signing the enclosed waiver;

(viii) State that a waiver of personal service shall not constitute a waiver of the right to opt out of the proceeding;

(ix) Describe the effect of agreeing or declining to waive service;

(x) Include a waiver of personal service form provided by the Board, containing a clear statement that waiving service does not affect the respondent's ability to opt out of the proceeding and that, if signed and returned by the respondent, will include—

(A) An affirmation that the respondent is waiving service;

(B) An affirmation that the respondent understands that the respondent may opt out of the proceeding within 60 days of receiving the request;

(C) The name and mailing address of the respondent;

(D) For a respondent that is represented by legal counsel or an *authorized representative*, the name(s), mailing address(es), email address(es), and telephone number(s) of such legal counsel or *authorized representative;*

(E) For a respondent that is not represented by legal counsel or an *authorized representative*, the email address and telephone number of that respondent; and

(F) The typed, printed, or handwritten signature of the respondent or, if the respondent is represented by legal counsel or an *authorized representative*, the typed, printed, or handwritten signature of the respondent's legal counsel or *authorized representative.* If the signature is handwritten, it shall be accompanied by a typed or printed name; and

(xi) Not be accompanied by any other substantive communications.

(3) *Completing waiver of service.* The respondent may complete waiver of service by returning the signed waiver form in the postage prepaid envelope to claimant by mail or, if the claimant also provides an email address to which the waiver of personal service form may be returned, by means of an email to which a copy of the signed form is attached. Waiving service does not affect a respondent's ability to opt out of a proceeding.

(4) *Timing of completing waiver.* The respondent has 30 days from the date on which the request was sent to return the waiver form.

(5) *Filing of waiver.* Where the respondent has completed the waiver form, the claimant must submit the completed waiver form to the Board no later than the earlier of seven calendar days after the date the claimant received the signed waiver form from the respondent or 90 days after receiving notification of compliance.

(d) *Service by the Copyright Claims Board*—(1) *In general.* Except as otherwise provided in this paragraph (d), the Board shall serve one copy of all orders, notices, decisions, rulings on motions, and similar documents issued by the Board upon each party through eCCB.

(2) *Service of second notice.* (i) The Board shall serve the *second notice* required under 17 U.S.C. 1506(h) and § 222.4, along with the documents described in § 222.3(b), by sending them by mail to the respondent at the address provided—

(A) In the designated service agent directory, if the respondent is a corporation, partnership, or unincorporated association that has designated a service agent; and, if not,

(B) By the claimant in the claim or, in a subsequent communication correcting the address.

(ii) The Board shall also serve the *second notice* by email if an email address for the respondent has been provided in the designated service agent directory or by the claimant.

(3) *Service of order regarding second filing fee and electronic filing registration on claimants.* The Board shall serve the orders set forth in § 222.7—

(i) On any respondents that have not registered for eCCB in the manner set forth in paragraph (d)(2) of this section; and

(ii) On any claimants that have not registered for eCCB by sending such documents—

(A) By mail at the address provided for the claimant in the claim and by email at the email address provided for the claimant in the claim; or

(B) If the claimant is represented by legal counsel or an *authorized representative,* by mail at the address provided for such counsel or *authorized representative* in the claim and by email at the email address provided for such legal counsel or *authorized representative* in the claim.

(e) *Service of discovery requests, responses, and responsive documents*—(1) *Service of discovery requests, responses, and responsive documents.* Except as provided in paragraph (f) of this section, unless the parties agree in writing to other arrangements, discovery requests and responses shall be served by email and documents or other evidence responsive to discovery requests shall be served by email where the size and format of the documents or evidence make such service reasonably possible. If such documents or other evidence cannot reasonably be served by email, the parties shall confer and agree to other arrangements. Should the parties be unable to agree to other arrangements, such documents or other evidence shall be served by mail. Service is complete upon sending, but service is not effective if the sender learns that it did not reach the party to be served.

(i) If a party is represented by legal counsel or an *authorized representative,* service under this paragraph must be made on the legal counsel or *authorized representative* at that legal counsel's or *authorized representative's* email address, or mailing address provided in the claim, response, or notice of appearance, unless the Board orders service on the party.

(ii) If a party is not represented, service under this paragraph (e)(1) must be made on the party at the email address or mailing address provided by that party in the claim or response.

(2) *Filing generally prohibited.* Unless the Board orders otherwise, discovery requests and responses should not be filed with the Board unless a party relies on the request or response as part of another filing in the proceeding.

(f) *Waiver of electronic filing and service requirements.* In exceptional circumstances, an individual not represented by legal counsel or an *authorized representative* may request that the Board waive the electronic filing and service requirements set forth in this subchapter. Whether such a waiver is granted is at the Board's discretion. If

a waiver is granted, the Board shall instruct the parties as to the filing and service requirements for that proceeding based on consideration of the circumstances of the proceeding and the parties.

[87 FR 17000, Mar. 25, 2022]

§ 222.6 Designated service agents.

(a) *In general.* A corporation, partnership, or unincorporated association that is entitled under 17 U.S.C. 1506(g)(5)(B) to designate a service agent to receive notice of a claim may designate such an agent by submitting the designation electronically through the Board's designated service agent directory, which shall be available on the Board's website.

(b) *Designation fee.* A service agent designation shall be accompanied by the fee set forth in 37 CFR 201.3.

(c) *Trade names and affiliated entities*—(1) *Trade names.* Each corporation, partnership, or unincorporated association that submits a service agent designation may include up to 50 trade names that function as alternate business names (*i.e.*, ''doing business as'' or ''d/b/a'' names) under which such registered corporation, partnership, or unincorporated association is doing business.

(2) *Affiliated entities.* Affiliated corporations, partnerships, or unincorporated associations that are separate legal entities but are under direct or indirect common control (*e.g.*, parent and subsidiary companies) of the filing corporation, partnership, or unincorporated association may also be included in the same service agent designation, but only if all of the information required in paragraph (d)(1)(ii), (iii), and (v) through (vii) of this section is the same for the filing corporation, partnership, or unincorporated association and the affiliated corporation, partnership, or unincorporated association. Otherwise, those separate legal entities must file separate service agent designations, although a submitter may designate the same service agent for multiple corporations, partnerships, or unincorporated associations.

(d) *Content of submission*—(1) *In general.* The designated service agent submission shall include:

(i) The legal name, business address, email address, and telephone number of the corporation, partnership, or unincorporated association;

(ii) The state in which the principal place of business of the corporation, partnership, or unincorporated association is located;

(iii) For corporations, the state or territory (including the District of Columbia) of incorporation;

(iv) Up to 50 additional names, consisting of either the names of affiliated entities or trade names, or both, as described in paragraph (c) of this section;

(v) The name, business address (or, if the agent does not have a business address, the address of the residence of such agent), email address, and telephone number of the designated service agent;

(vi) The submitter's name, email address, and telephone number; and

(vii) The corporation, partnership, or unincorporated association's service method election, as described in paragraph (e) of this section.

(2) *Certification.* To complete the designation, the person submitting the designation shall certify, under penalty of perjury, that the submitter is authorized by law to make the designation on behalf of the corporation, partnership, or unincorporated association, including any other affiliated entities for which the filing is made.

(e) *Service on designated agents.* A corporation, partnership, or unincorporated association that designates a service agent shall, as a condition of designating a service agent, consent to receive service upon the agent by means of certified or priority mail at the identified mailing address. It may also indicate in its designation that it consents to receive service by email at the identified email address.

(1) *Service by mail.* The corporation, partnership, or unincorporated association shall identify the service agent's place of business or, if there is no place of business, the address of the service agent's residence for purposes of service by mail. The service agent's place of business or address of the service agent's residence must be located within the United States.

(2) *Service by email.* (i) If a corporation, partnership, or unincorporated

association indicates that it consents to receive service by email, the designated service agent's email address shall be displayed on the designated service agent directory.

(ii) In cases where the designation states that service may be made by email, the person submitting the designation shall affirm under penalty of perjury that the corporation, partnership, or unincorporated association for which the agent has been designated waives the right to personal service by means other than email and that the person making the designation has been authorized to waive that right on behalf of the corporation, partnership, or unincorporated association and any other affiliated entity for which the filing is made for Board proceedings.

(f) *Amendments.* A corporation, partnership, or unincorporated association shall have a duty to maintain current information in the directory. A corporation, partnership, or unincorporated association may amend a designation of a service agent by following directions on the Board's website. Such amendment shall be accompanied by the fee set forth in 37 CFR 201.3. The requirements found in paragraph (d) of this section shall apply to the service agent designation amendment. If current information is not timely maintained and, as a result, the identification or address of the service agent in the directory is no longer accurate, the Board may, in its discretion and subject to any reasonable conditions that the Board may decide to impose, determine whether service upon that agent or at that address was effective.

(g) *Public directory*—(1) *In general.* After a corporation, partnership, or unincorporated association submits a service agent designation, such designation shall be made available on the public designated service agent directory after payment has been remitted and the Board has reviewed the submission to determine whether the submission qualifies for the designated agent provision.

(2) *Removal from directory.* If the Board determines that a submitted service agent designation does not qualify under this section or if it has reason to believe that the submitter was not authorized by law to make the designation on behalf of the corporation, partnership, or unincorporated association, it shall notify the submitter that it intends not to add the record to the directory, or that it intends to remove the record from the directory, and shall provide the submitter 10 calendar days to respond. If the submitter fails to respond, or if, after reviewing the response, the Board determines that the submission does not qualify for the designated service agent directory, the entity shall not be added to, or shall be removed from, the directory.

(3) *Content of public listing.* The designation shall be indexed under the names of each corporation, partnership, or unincorporated association for which an agent has been designated and shall be made available on the Board's website. The email address and telephone number of the corporation, partnership, or unincorporated association provided under paragraph (d)(1)(i) of this section shall not be made publicly available on the designated service agent directory website, but such information shall be made available to Board staff.

(4) *Designation date.* A designation filed in accordance with this section before April 7, 2022 will become effective on that date.

§ 222.7 Order regarding second filing fee and electronic filing registration.

(a) *Issuance of order.* Once a proceeding has become active with respect to all respondents who have been served and have not opted out within the 60-day period set forth in 17 U.S.C. 1506(i), the Board shall issue an order to all parties in the proceeding providing that within 14 days of the order—

(1) The claimant must submit the second payment of the filing fee set forth in 37 CFR 201.3(g) through eCCB; and

(2) All claimant(s) and respondent(s) must register for eCCB unless they have been granted a waiver pursuant to § 222.5(f).

(b) *Receipt of second payment from claimant*—(1) *Confirmation of active proceeding.* Upon receipt of the second payment of the filing fee set forth in 37

CFR 201.3(g) and after completion of the 14-day period specified in the Board's order, the Board shall issue a scheduling order through eCCB.

(2) *Notice to respondent.* If any claimant or respondent has not registered for eCCB, the scheduling order shall be accompanied by a notice to those parties that unless they have been granted a waiver pursuant to § 222.5(f), they must register for eCCB and that a failure to do so within a time set by the Board may result in default or failure to prosecute. Such scheduling order and notice shall be served on the respondent according to the procedures set forth in § 222.5(d)(2).

(c) *Failure of claimant to submit second payment.* If the claimant(s) fails to submit the second payment of the filing fee set forth in 37 CFR 201.3(g) within 14 days from the date of the Board's order, the Board shall issue another notice to the claimant(s), which shall provide that the proceeding shall be dismissed without prejudice unless the claimant(s) submits the second payment of the filing fee within 14 days. If the claimant(s) fails to submit the second payment of the filing fee within 14 days of the issuance of that notice, the Board shall dismiss the proceeding without prejudice, unless the Board finds that the proceeding should not be dismissed in the interests of justice.

[87 FR 17004, Mar. 25, 2022]

§ 222.8 Response.

(a) *Filing a response.* Following receipt of the scheduling order in an active proceeding, each respondent shall file a response through eCCB using the response form provided by the Board. Except for respondents who are represented by the same legal counsel or *authorized representative*, each respondent shall submit a separate response.

(b) *Content of response.* The response shall include—

(1) The name and mailing address of the respondent(s) and, for any respondents represented by legal counsel or an *authorized representative*, of such respondent's legal counsel or *authorized representative;*

(2) The phone number and email address of—

(i) The respondent, if the respondent is not represented by legal counsel or an *authorized representative;* or

(ii) The legal counsel or other *authorized representative* for the respondent, if the respondent is represented by legal counsel or an *authorized representative;*

(3) A short statement, if applicable, disputing any facts asserted in the claim;

(4) For infringement claims brought under 17 U.S.C. 1504(c)(1), a statement describing in detail the dispute regarding the alleged infringement, including reasons why the respondent contends that it has not infringed the claimant's copyright, and any additional defenses, including whether any exceptions and limitations as set forth in 17 U.S.C. 107 through 122 are implicated;

(5) For declaration of noninfringement claims brought under 17 U.S.C. 1504(c)(2), a statement describing in detail the dispute regarding the alleged infringement, including reasons why the respondent contends that its copyright has been infringed by claimant, and any additional defenses the respondent may have to the claim;

(6) For misrepresentation claims brought under 17 U.S.C. 1504(c)(3), a statement describing in detail the dispute regarding the alleged misrepresentation, including an explanation of why the respondent believes the identified words do not constitute misrepresentation, and any additional defenses the respondent may have to the claim;

(7) Any counterclaims pursuant to § 222.9; and

(8) A certification under penalty of perjury by the respondent or the respondent's legal counsel or *authorized representative* that the information provided in the response is accurate and truthful to the best of the certifying person's knowledge and, if the certifying person is not the respondent, that the certifying person has confirmed the accuracy of the information with the respondent. The certification shall include the typed signature of the certifying person.

(c) *Additional matter.* The respondent may also include, as attachments to or files that accompany the response, any material the respondent believes plays a significant role in setting forth the facts of the claim, such as:

(1) A copy of the copyright registration certificate for a work that is the subject of the proceeding;

(2) A copy of the allegedly infringed work. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows where the allegedly infringed work has been posted;

(3) A copy of the allegedly infringing material. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows any allegedly infringing activity;

(4) A copy of the notification of claimed infringement that is alleged to contain the misrepresentation;

(5) A copy of the counter notification that is alleged to contain the misrepresentation; and

(6) Any other exhibits that play a significant role in setting forth the facts of the response.

(d) *Additional information required during response submission.* In connection with the submission of the response the respondent shall also provide—

(1) For any respondent that is represented by legal counsel or an *authorized representative,* the email address and telephone number of that respondent. Such information shall not be part of the response; and

(2) Any further information that the Board may determine should be provided.

(e) *Timing of response.* The respondent has 30 days from the issuance of the scheduling order to submit a response. If the respondent waived personal service, the respondent will have an additional 30 days to submit the response.

(f) *Failure to file response.* A failure to file a response within the required timeframe may constitute a default under 17 U.S.C. 1506(u), and the Board may begin proceedings in accordance with part 227 of this subchapter.

[87 FR 17004, Mar. 25, 2022, as amended at 87 FR 30077, May 17, 2022; 87 FR 36060, June 15, 2022]

§ 222.9 Counterclaim.

(a) *Asserting a counterclaim.* Any party can assert a counterclaim falling under the jurisdiction of the Board that also—

(1) Arises out of the same transaction or occurrence as the initial claim; or

(2) Arises under an agreement pertaining to the same transaction or occurrence that is subject to an initial claim of infringement, if the agreement could affect the relief awarded to the claimant.

(b) *Electronic filing requirement.* A party may submit a counterclaim through eCCB using the counterclaim form provided by the Board.

(c) *Content of counterclaim.* The counterclaim shall include—

(1) The name of the party or parties against whom the counterclaim is asserted;

(2) An identification of the counterclaim, which shall consist of at least one of the following:

(i) A claim for infringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106;

(ii) A claim for a declaration of noninfringement of an exclusive right in a copyrighted work provided under 17 U.S.C. 106; or

(iii) A claim under 17 U.S.C. 512(f) for misrepresentation in connection with—

(A) A notification of claimed infringement; or

(B) A counter notification seeking to replace removed or disabled material;

(3) For an infringement counterclaim asserted under paragraph (c)(2)(i) of this section—

(i) That the counterclaimant is the legal or beneficial owner of rights in a work protected by copyright and, if there are any co-owners, their names;

(ii) The following information for each work at issue in the counterclaim:

(A) The title of the work;

(B) The author(s) of the work;

(C) If a copyright registration has issued for the work, the registration number and effective date of registration;

(D) If an application for copyright has been submitted but a registration has not yet issued, the service request number (SR number) and registration application date; and

(E) The work of authorship category, as set forth in 17 U.S.C. 102, for each work at issue, or, if the counterclaimant is unable to determine the applicable category, a brief description of the nature of the work;

(iii) A description of the facts relating to the alleged infringement, including, to the extent known to the counterclaimant:

(A) Which exclusive rights provided under 17 U.S.C. 106 are at issue;

(B) When the alleged infringement began;

(C) The name(s) of all person(s) or organization(s) alleged to have participated in the infringing activity;

(D) The facts leading the counterclaimant to believe the work has been infringed;

(E) Whether the alleged infringement has continued through the date the claim was filed, or, if it has not, when the alleged infringement ceased;

(F) Where the alleged act(s) of infringement occurred; and

(G) If the claim of infringement is asserted against an online service provider as defined in 17 U.S.C. 512(k)(1)(B) for infringement by reason of the storage of or referral or linking to infringing material that may be subject to the limitations on liability set forth in 17 U.S.C. 512(b), (c), or (d), an affirmance that the counterclaimant has previously notified the service provider of the claimed infringement in accordance with 17 U.S.C. 512(b)(2)(E), (c)(3), or (d)(3), as applicable, and that the service provider failed to remove or disable access to the material expeditiously upon the provision of such notice;

(4) For a declaration of noninfringement counterclaim asserted under paragraph (c)(2)(ii) of this section—

(i) The name(s) of the person(s) or organization(s) asserting that the counterclaimant has infringed a copyright;

(ii) The following information for each work alleged to have been infringed, if that information is known to the counterclaimant:

(A) The title;

(B) If a copyright registration has issued for the work, the registration number and effective date of registration;

(C) If an application for copyright has been submitted, but a registration has not yet issued, the service request number (SR number) and registration application date; and

(D) The work of authorship category, as set forth in 17 U.S.C. 102, or, if the counterclaimant is unable to determine which category is applicable, a brief description of the nature of the work;

(iii) A brief description of the activity at issue in the claim, including, to the extent known to the counterclaimant:

(A) Any exclusive rights provided under 17 U.S.C. 106 that may be implicated;

(B) When the activities at issue began and, if applicable, ended;

(C) Whether the activities at issue have continued through the date the claim was filed;

(D) The name(s) of all person(s) or organization(s) who participated in the allegedly infringing activity; and

(E) Where the activities at issue occurred;

(iv) A brief statement describing the reasons why the counterclaimant believes that no infringement occurred, including any relevant history or agreements between the parties and whether counterclaimant currently believes any exceptions and limitations as set forth in 17 U.S.C. 107 through 122 are implicated; and

(v) A brief statement describing the reasons why the counterclaimant believes that there is an actual controversy concerning the requested declaration;

(5) For a misrepresentation counterclaim asserted under paragraph (c)(2)(iii) of this section—

(i) The sender of the notification of claimed infringement;

(ii) The recipient of the notification of claimed infringement;

(iii) The date the notification of claimed infringement was sent, if known;

(iv) A description of the notification;

(v) If a counter notification was sent in response to the notification—

(A) The sender of the counter notification;

(B) The recipient of the counter notification;

(C) The date the counter notification was sent, if known; and

(D) A description of the counter notification;

(vi) The words in the notification or counter notification that allegedly constituted a misrepresentation; and

(vii) An explanation of the alleged misrepresentation;

(6) For infringement claims and misrepresentation claims, a statement describing the harm suffered by the claimant(s) as a result of the alleged activity and the relief sought by the claimant(s). Such statement may, but is not required to, include an estimate of any monetary relief sought;

(7) A statement describing the relationship between the initial claim and the counterclaim; and

(8) A certification under penalty of perjury by the counterclaimant or the counterclaimant's legal counsel or *authorized representative* that the information provided in the counterclaim is accurate and truthful to the best of the certifying person's knowledge and, if the certifying person is not the counterclaimant, that the certifying person has confirmed the accuracy of the information with the counterclaimant. The certification shall include the typed signature of the certifying person.

(d) *Additional matter*. The counterclaimant may also include, as attachments to or files that accompany the counterclaim, any material the counterclaimant believes plays a significant role in setting forth the facts of the claim, such as:

(1) A copy of the copyright registration certificate for a work that is the subject of the proceeding;

(2) A copy of the allegedly infringed work. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows where the allegedly infringed work has been posted;

(3) A copy of the allegedly infringing material. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows any allegedly infringing activity;

(4) A copy of the notification of claimed infringement that is alleged to contain the misrepresentation;

(5) A copy of the counter notification that is alleged to contain the misrepresentation; and

(6) Any other exhibits that play a significant role in setting forth the facts of the counterclaim.

(e) *Timing of counterclaim*. A counterclaim must be served and filed with the respondent's response unless the Board, for good cause, permits a counterclaim to be asserted at a subsequent time.

[87 FR 17004, Mar. 25, 2022]

§ 222.10 Response to counterclaim.

(a) *Filing a response to a counterclaim*. Within 30 days following the Board's issuance of notification that a counterclaim is compliant under 37 CFR 224.1, a claimant against whom a counterclaim has been asserted (counterclaim respondent) shall file a response to the counterclaim through eCCB using the response form provided by the Board.

(b) *Content of response to a counterclaim*. The response to a counterclaim shall include—

(1) The name, mailing address, phone number, and email address of each counterclaim respondent filing the response;

(2) A short statement, if applicable, disputing any facts asserted in the counterclaim;

(3) For counterclaims brought under 17 U.S.C. 1504(c)(1), a statement describing in detail the dispute regarding the alleged infringement, including any defenses as well as any reason why the counterclaim respondent believes there was no infringement of copyright, including any exceptions and limitations as set forth in 17 U.S.C. 107 through 122 that are implicated;

(4) For counterclaims brought under 17 U.S.C. 1504(c)(2), a statement describing in detail the dispute regarding the alleged infringement, including reasons why the counterclaim respondent believes there is infringement of copyright;

(5) For counterclaims brought under 17 U.S.C. 1504(c)(3), a statement describing in detail the dispute regarding the alleged misrepresentation and an explanation of why the counterclaim respondent believes the identified words do not constitute misrepresentation; and

(6) A certification under penalty of perjury by the claimant, the claimant's legal counsel, or the claimant's *authorized representative* that the information

provided in the response to the counterclaim is accurate and truthful to the best of the certifying person's knowledge and, if the certifying person is not the counterclaim respondent, that the certifying person has confirmed the accuracy of the information with the counterclaim respondent. The certification shall include the typed signature of the certifying person.

(c) *Additional matter*. The counterclaim respondent may also include, as attachments to or files that accompany the counterclaim response, any material the counterclaim respondent believes play a significant role in setting forth the facts of the claim, such as:

(1) A copy of the copyright registration certificate for a work that is the subject of the proceeding;

(2) A copy of the allegedly infringed work. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows where the allegedly infringed work has been posted;

(3) A copy of the allegedly infringing material. This copy may also be accompanied by additional information, such as a hyperlink or screenshot, that shows any allegedly infringing activity;

(4) A copy of the notification of claimed infringement that is alleged to contain the misrepresentation;

(5) A copy of the counter notification that is alleged to contain the misrepresentation; and

(6) Any other exhibits that play a significant role in setting forth the facts of the counterclaim response.

(d) *Failure to file counterclaim response*. A failure to file a counterclaim response within the timeframe required by this section may constitute a default under 17 U.S.C. 1506(u), and the Board may begin default proceedings under part 227 of this subchapter.

[87 FR 17004, Mar. 25, 2022, as amended at 87 FR 30077, May 17, 2022; 87 FR 36060, June 15, 2022]

§ 222.11 Scheduling order.

(a) *Timing*. Upon receipt of the second payment of the filing fee set forth in § 201.3(g) of this subchapter and after completion of the 14-day period specified in the Board's order pursuant to § 222.7, the Board shall issue an initial scheduling order through eCCB, subject to § 222.7(b)(1).

(b) *Content of initial scheduling order*. The scheduling order shall include the dates or deadlines for:

(1) Filing of a response to the claim by the respondent;

(2) A pre-discovery conference with a Copyright Claims Officer (Officer) to discuss case management, including discovery, and the possibility of resolving the claims and any counterclaims through settlement;

(3) Service of responses to *standard interrogatories;*

(4) Service of documents in response to *standard requests for the production of documents;*

(5) Requests for leave to seek additional discovery;

(6) Close of discovery;

(7) A post-discovery conference with an Officer to discuss further case management, including the possibility of resolving the claims and any counterclaims through settlement; and

(8) Filing of each party's written testimony and responses, pursuant to § 222.15.

(c) *Conferences*. In addition to those identified in paragraph (b) of this section, the Board may hold additional conferences, at its own election or at the request of any party. Requests for a conference and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. All conferences shall be held virtually.

(d) *Amended scheduling order*. The Board may amend the initial scheduling order—

(1) Upon the clearance of a counterclaim by a Copyright Claims Attorney pursuant to § 224.1(c)(1) of this subchapter, to add a deadline for the service of a response by a claimant to a counterclaim and to amend other previously scheduled dates in the prior scheduling order;

(2) Upon request of one or more of the parties to an *active proceeding* submitted through eCCB. Requests to amend the scheduling order and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter;

(3) As necessary to adjust the schedule for conferences or hearings or the staying of the proceeding;

(4) As necessary to facilitate settlement pursuant to § 222.18; or

(5) Upon its own initiative in the interests of maintaining orderly administration of the Board's docket.

[87 FR 30077, May 17, 2022]

§ 222.12 Amending pleadings.

(a) *Amendments before service.* A claimant who has been notified pursuant to § 224.1(c)(2) of this subchapter that a claim does not comply with the applicable statutory and regulatory requirements may freely amend any part of the claim as part of an amended claim filed under 17 U.S.C. 1506(f)(1)(B). A claimant who has been notified pursuant to § 224.1(c)(1) of this subchapter that a claim has been found to comply with the applicable statutory and regulatory requirements may freely amend the claim once as a matter of course prior to service. Any claim that is amended shall be submitted for compliance review under § 224.1(a) of this subchapter.

(b) *Amendments during the opt-out period.* A claimant may not amend a claim during the opt-out period for any respondent.

(c) *Amendment of counterclaim before response.* A counterclaimant may freely amend its counterclaim once as a matter of course prior to filing of the response to the counterclaim. The filing of any amended counterclaim shall suspend the time for responding to the counterclaim and the counterclaim shall be submitted for compliance review under § 224.1(a) of this subchapter. A counterclaimant who has been notified pursuant to § 224.1(c)(2) of this subchapter that a counterclaim does not comply with the applicable statutory and regulatory requirements may amend any part of the counterclaim as part of an amended counterclaim filed under 17 U.S.C. 1506(f)(2). The counterclaim respondent shall file a response to the amended counterclaim within 30 days following compliance review approval of the amended counterclaim.

(d) *All other amendments.* In all other cases, a party may amend its pleading only with the Board's leave. If the Board grants leave, any amendment shall be submitted for a compliance review under § 224.1(a) of this subchapter.

(1) *Time to respond.* Unless the Board orders otherwise or as otherwise covered by this subchapter, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 30 days after the Board's notification that the amended pleading is compliant, whichever is later.

(2) *Procedure for request for leave to amend.* The party seeking leave to amend must submit a request to the Board setting forth the reasons why an amended pleading is appropriate. Requests for leave to amend and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(3) *Standard for granting leave to amend.* In determining whether to grant leave to amend a pleading, the Board shall grant leave if justice so requires after considering whether any other party will be prejudiced if the amendment is permitted (including the impact the amendment might have on a respondent's right to opt out of the proceeding), whether the proceedings will be unduly delayed if the amendment is permitted, and whether the basis for the amendment reasonably should have been known to the amending party before the pleading was served or during the time period specified in paragraph (a) of this section, along with any other relevant considerations. If leave is granted, it shall only be granted regarding the specific amendments described in the request.

[87 FR 30077, May 17, 2022]

§ 222.13 Consolidation.

(a) *Consolidation.* If a claimant has multiple *active proceedings* against the same respondent or that arise out of the same facts and circumstances, the Board may consolidate the proceedings for purposes of conducting discovery, submitting evidence to the Board, or holding hearings. Consolidated proceedings shall remain separate for purposes of Board determinations and any damages awards.

(b) *Timing.* The Board may consolidate proceedings at any time upon its own authority or following consideration of a request by any party, with

reasonable notice and opportunity to be heard provided to all affected parties.

(c) *Procedure.* The party seeking consolidation must submit a request to the Board setting forth the reasons for the request, requesting a conference with the Board and the parties from each affected case, and providing the Board with the docket numbers for each affected proceeding. Requests for consolidation and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(d) *Standard for granting request.* In determining whether to grant a request to consolidate, the Board shall balance the need for and benefits of consolidation with the timeliness of the request and whether any undue prejudice has resulted from the delay in making the request.

[87 FR 30077, May 17, 2022]

§ 222.14 Additional parties.

(a) *When applicable.* A necessary party is a person or entity whose absence would prevent the Board from according complete relief among existing parties, or who claims an interest related to the subject of the proceeding such that reaching a determination in the proceeding may impair or impede that person's or entity's ability to protect that interest as a practical matter, or in whose absence an existing party would be subject to a substantial risk of incurring double, multiple, or inconsistent obligations because of that interest.

(b) *Failure to join a necessary party.* At any time, any party who believes in good faith that a necessary party has not been joined, and therefore the case is unsuitable for Board proceedings, may file a request according to the procedures set forth in §§ 220.5(a)(2) and 224.2(c) of this subchapter. Any party opposing the request may file a response according to the procedures set forth in §§ 220.5(a)(2) and 224.2(c). If the Board determines that a necessary party has not been joined, it shall dismiss the proceeding without prejudice as unsuitable for CCB proceedings pursuant to § 224.2.

(c) *Intervention of a necessary party.* At any time, a third party seeking to intervene on the ground(s) that it is a necessary party may file a request setting forth the reasons for the request and requesting a conference with the Board. Requests to intervene and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. After evaluating the parties' submissions, the Board may hold a conference between the parties to the proceeding and the intervening party to address the request.

(d) *Board determination.* (1) If the Board determines that the intervening party is not a necessary party, it shall deny the request and resume the proceeding, unless all parties agree that the party should be joined.

(2) If the Board determines that the intervening party is a necessary party, it shall—

(i) Permit the intervening party to join the proceeding, if no party indicated that it opposed the request to intervene; or

(ii) Dismiss the proceeding without prejudice, if any party indicated that it opposed the request to intervene.

[87 FR 30077, May 17, 2022; 87 FR 36060, June 15, 2022]

§ 222.15 Written testimony on the merits.

(a) *Timing.* After the close of discovery and by the times specified within the scheduling order, any party asserting a claim or counterclaim shall file written direct testimony in support of that claim or counterclaim. Any party responding to a claim or counterclaim shall file written response testimony within 45 days following the date of service of written direct testimony. Any party who asserted a claim or counterclaim may file written reply testimony within 21 days following the date of service of written response testimony. All written testimony shall be uploaded to eCCB.

(b) *Direct and response testimony.* Written direct and response testimony shall consist of documentary evidence and a party statement, and may include witness statements.

(1) *Documentary evidence.* (i) Documentary evidence must be accompanied by a statement that lists each submitted document and provides a brief description of each document and

how it bears on a claim or counterclaim; and

(ii) Direct or response documentary evidence shall only include documents that were served on opposing parties pursuant to the scheduling order, absent leave from the Board, which shall be granted only for good cause.

(2) *Witness statements.* A witness statement must—

(i) Be sworn under penalty of perjury by the witness;

(ii) Be detailed as to the substance of the witness's knowledge and must be organized into numbered paragraphs; and

(iii) Contain only factual information based on the witness's personal knowledge and may not contain legal argument.

(3) *Party statement.* A party statement—

(i) Shall set forth the party's position as to the key facts and damages, as well as any position as to the law;

(ii) Need not have a table of contents or authorities;

(iii) Shall be limited to 12 pages, other than any optional table of contents or authorities, and shall meet the requirements set forth in §220.5(b) of this subchapter;

(iv) For a claimant or counterclaimant seeking damages for copyright infringement, shall include a statement as to whether the party is electing to seek statutory damages or actual damages and any profits. Alternatively, at any stage of the proceedings, either before or after the submission of written testimony, a claimant or counterclaimant may submit a statement following the procedures set forth in §220.5(a)(1) of this subchapter indicating the election of the form of damages. This election may be changed at any time up until *final determination* by the Board; and

(v) For a respondent or counterclaim respondent, may include a statement as to whether, if found liable on a claim or counterclaim, the party would voluntarily agree to an order to cease or mitigate any unlawful activity. Such an election must be made, or changed if made earlier, no later than the filing of the respondent's or counterclaim respondent's party statement, or at a hearing if one is ordered by the Board. Such an election may be considered in appropriate cases by the Board in determining an amount of damages, if any, pursuant to 17 U.S.C. 1504. Such a statement will not be considered by the Board in any way in making its determination as to liability, and shall be considered only as to damages.

(c) *Reply testimony.* Written reply testimony must be limited to addressing or rebutting specific evidence set forth in written response testimony. Written reply testimony may consist of documentary evidence, witness statements, and a party statement as set forth in this paragraph (c).

(1) *Documentary evidence.* In addition to the requirements of paragraph (b)(1) of this section, documentary evidence presented by a party as part of written reply testimony must be limited to documentary evidence required to contradict or rebut specific evidence that was presented in an opposing party's written response testimony and shall not include any documentary evidence previously presented as part of the submitting party's direct testimony.

(2) *Witness statements.* In addition to the requirements of paragraph (b)(2) of this section, a reply witness statement must be limited to facts not previously included in that witness's prior statement, and must be limited to facts that contradict or rebut specific evidence that was presented in an opposing party's written response testimony.

(3) *Party statement.* A party statement in reply must be limited to rebutting or addressing an opposing party's written response testimony and may not include any discussion of the facts, the law, or damages that was included in that party's direct party statement. A reply party statement shall meet the requirements set forth in §220.5(b) of this subchapter and must be limited to seven pages.

(d) *Certification.* All written testimony submitted to the Board must include a certification by the party submitting such testimony that it is accurate and truthful.

(e) *Request for hearing.* Any party may include in a party statement a request for a hearing on the merits before the Board, consistent with §222.16.

(f) *No additional filing.* Following filing of any written reply testimony, no

further written testimony or evidence may be submitted to the Board, unless at the specific request of the Board or with the Board's leave, or as appropriate at a hearing on the merits ordered by the Board.

[87 FR 30077, May 17, 2022]

§ 222.16 Hearings.

(a) *Timing.* In any action, the Board may hold a hearing following submission of each party's written direct, response, and reply testimony if it determines that such a hearing is appropriate or advisable. The Board may decide to hold a hearing on its own initiative or after consideration of a request for a hearing from any party.

(b) *Virtual hearings.* All hearings shall be held virtually and may be recorded as deemed necessary by the Board.

(c) *Requesting a hearing.* A request for a hearing on the merits of a case may be included in a party statement, pursuant to § 222.15(e), but may also be submitted following the procedures set forth in § 220.5(a)(1) of this subchapter no later than 7 days after the date by which reply testimony may be submitted under § 222.15(a). The Board, in its sole discretion, shall choose whether to hold a hearing, and may elect to hold a hearing absent a request from a party.

(d) *Content of request.* Any request in a party statement for a hearing on the merits of a case shall consist of a short statement providing the reasons why the party believes the request should be granted.

(e) *Scheduling order.* When the Board determines that a hearing on the merits of a case is appropriate, it will issue an amended scheduling order setting forth the date of the hearing and deadlines for any additional evidence requested by the Board or for a pre-hearing conference, if applicable.

(f) *Close of evidence.* Following a hearing on the merits of a case, no additional written testimony or evidence may be submitted to the Board unless at the Board's specific request or with leave of the Board for good cause shown.

[87 FR 30077, May 17, 2022]

§ 222.17 Withdrawal of claims; dismissal.

(a) *General.* A party may request to withdraw its own claim or counterclaim by filing a written request with the Board seeking withdrawal, and therefore dismissal. Such written request shall consist of a brief statement seeking dismissal and shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Withdrawal before a response.* If the written request is received before a response to the claim or counterclaim is filed with the Board, the Board shall dismiss the claim or counterclaim without prejudice, unless all parties agree in a written stipulation filed with the Board that the claim or counterclaim shall be dismissed with prejudice.

(c) *Withdrawal after a response.* If the written request is received after a response to the claim or counterclaim is filed with the Board, the Board shall issue a *final determination* dismissing the claim or counterclaim with prejudice, unless the Board determines in the interests of justice that such dismissal shall be without prejudice or all parties agree in a written stipulation filed with the Board that the claim or counterclaim shall be dismissed without prejudice.

(d) *Effect of dismissal.* Dismissal of a claim or counterclaim under this section will not affect any remaining claims or counterclaims in the proceeding.

[87 FR 30077, May 17, 2022; 87 FR 36060, June 15, 2022]

§ 222.18 Settlement.

(a) *General.* The Board shall facilitate voluntary settlement between the parties of any claims or counterclaims. The appropriateness of a settlement conference, at a minimum, shall be raised by the Board at the pre-discovery and post-discovery conferences set forth in § 222.11(b).

(b) *Requesting a settlement conference—*(1) *Timing.* At any point in an *active proceeding*, some or all of the parties may jointly request a conference with an Officer to facilitate settlement discussions.

(2) *Form and content of request.* The request can be made orally at any Board conference or it can be made in writing. If made in writing, the request shall consist of a brief statement requesting a settlement conference and indicating which parties join in the request. Parties may also include a request to stay the proceedings while settlement discussions are ongoing. Granting a request for a stay shall be at the Board's discretion. Requests for a settlement conference and any responses thereto shall follow the procedures set forth in §220.5(a)(1) of this subchapter.

(c) *Scheduling settlement conference.* If the request for a settlement conference, and any request for a stay, is jointly made among the parties, or if no party files a response within seven days of the date of service of the request, the Board shall schedule a settlement conference with all parties subject to the request. If one or more parties files a response, upon consideration of the objections and whether any claims or counterclaims may be resolved with only the consenting parties in attendance, the Board may schedule a conference with some or all parties.

(d) *Settlement proceedings.* Three days prior to a settlement conference, each party participating in the conference shall submit a position statement to the presiding Officer by email and, when there is agreement among the parties, send such statement to the other participating parties outside of eCCB. The position statement shall not exceed five pages, and shall attach no more than 20 pages of exhibits, absent leave of the presiding Officer, although leave shall not be necessary should the page limit be exceeded due to an exhibit being a necessary agreement or contract. Settlement statements shall meet the requirements set forth in §220.5(b) of this subchapter, but shall not be filed on eCCB. The statement must set forth:

(1) A brief overview of the facts and contentions;

(2) The relief sought, including the amount of damages, if any;

(3) Whether or to what extent the alleged wrongful conduct is currently taking place; and

(4) Any prior attempts at resolution, including any offers or counteroffers made to the other party.

(e) *Recusal of presiding Officer.* The Officer presiding over the settlement conference shall not participate in rendering a determination in the proceeding, unless the other Officers cannot reach a consensus as to the determination. The presiding Officer may review the record and attend any hearing that is held but shall not actively participate in the hearing or any substantive discussion among the Officers concerning the proceeding or the determination, except that such discussions may be allowed once it is known that the other Officers cannot reach a consensus as to the determination.

(f) *Stay of proceeding.* To provide the parties with an opportunity to pursue settlement and negotiate any resulting settlement agreement, the Board in its discretion may stay the proceeding for a period of 30 days concurrently with an order scheduling a settlement conference, at the time of or following the settlement conference, or at the request of the parties. The parties may request an extension of the stay in good faith to facilitate ongoing settlement discussions. Requests to stay or extend a stay of the proceeding and any responses thereto shall follow the procedures set forth in §220.5(a)(1) of this subchapter. If a settlement has not been reached at the time the stay, or any extension thereof, has expired, the Board shall issue an amended scheduling order to govern the remainder of the proceeding.

(g) *Settlement agreement.* If some or all parties reach a settlement, such parties may submit to the Board a joint request to dismiss some or all of the claims and counterclaims. The parties may include a request that the Board adopt some or all of the terms of the settlement in its *final determination.* Joint requests for dismissal shall follow the procedures set forth in §220.5(a)(1) of this subchapter.

(h) *Effect of settlement agreement.* Upon receipt of a joint request to dismiss claims due to settlement, the Board shall dismiss the claims or counterclaims contemplated by the agreement with prejudice, unless the parties have included in their request that the

claims or counterclaims shall be dismissed without prejudice. If the parties have requested that the Board adopt some or all of the terms of the settlement in its *final determination*, the Board may issue a *final determination* incorporating such terms unless the Board finds them clearly unconscionable.

[87 FR 30077, May 17, 2022]

§ 222.19 Protective orders; personally identifiable information.

(a) *Standard protective order*. At the request of any party, the Board's standard protective order, as described in this section, shall govern all discovery material exchanged during the proceeding to protect against improper use or disclosure. Requests for a standard protective order shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(1) *Standard of use*. Discovery material received from another party may be used only in connection with the proceeding, and all copies must be returned or disposed of within 30 days of a determination or dismissal, or within 30 days of the exhaustion of the time for any review or appeal of the Board's *final determination*, whichever is later.

(2) *Confidentiality*. Discovery material may be designated as ''confidential'' only if the party reasonably and in good faith believes that it consists of:

(i) Bona fide confidential financial information previously not disclosed to the public;

(ii) Bona fide confidential and non-obvious business plans, product development information, or advertising or marketing plans previously not disclosed to the public;

(iii) Any information of a truly personal or intimate nature regarding any individual not known by the public; or

(iv) Any other category of information that the Board grants leave to designate as ''confidential.''

(3) *Case-by-case basis*. Parties must make confidentiality determinations on a document-by-document basis and shall not designate as ''confidential'' all discovery material produced in bulk.

(4) *Submitting confidential information*. Confidential discovery materials, or references to or discussions of confidential discovery materials in other documents, may be submitted to the Board by either filing them under seal or redacting the confidential document. If filed under seal, the confidential document must be accompanied by a redacted copy that may be included in the public record.

(5) *Determination of confidentiality by the Board*. After notice and an opportunity for the designating party to respond, the Board in its discretion may remove a confidentiality designation from any material on its own initiative or upon consideration of a request from a party. Parties must attempt to resolve disputes over confidentiality designations before bringing such disputes to the Board. Requests to remove a confidentiality designation and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Custom protective orders*. Custom protective orders negotiated by the parties are disfavored. The parties may request that the Board enter a custom protective order that has been negotiated by the parties and that may provide for additional protections for highly sensitive materials. Such a request must be accompanied by a stipulation between the parties that explains the need for such a custom protective order and shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. The custom protective order must be attached as an exhibit to the request. The Board may in its discretion decide whether to grant the parties' request for a custom protective order.

(c) *Personally identifiable information*. Regardless of whether discovery material has been designated as ''confidential,'' parties must redact social security numbers, taxpayer identification numbers, birth dates, health information protected by law, the names of any individuals known to be minors, and financial account numbers from any public filings.

(d) *Violations of protective order*. Violations of a protective order may constitute *bad-faith conduct* pursuant to § 232.3 of this subchapter.

[87 FR 30077, May 17, 2022]

§ 222.20 Evidence.

(a) *Admissibility*. All evidence that is relevant and not unduly repetitious or privileged shall be admissible. Evidence which has authentication or credibility issues will have its weight discounted accordingly. The Board reserves the right to discount evidence or not admit evidence with serious credibility issues entirely, or to request clarification from a party.

(b) *Examination of witnesses*. All witnesses testifying at a hearing before the Board shall be required to take an oath or affirmation before testifying. At a hearing, any member of the Board may administer oaths and affirmations, ask questions of any witness, and each party shall have the opportunity to ask questions of each witness and the other parties. The Board shall manage the conduct of the hearing and may limit the number of witnesses or scope of questioning.

(c) *Exhibits in hearing*—(1) *Submission*. Unless they are specifically excluded by the Board's own initiative or due to the Board's ruling on an objection raised by a party, all documents submitted by the parties through their statements submitted under § 222.15 shall be deemed admitted and marked as exhibits in the same order as presented through the documentary evidence a party submitted with the party statement. To the extent additional documents are allowed by the Board at a hearing on the merits, such evidence may also be presented as exhibits to all parties and marked by the presenting party starting with the next number after the exhibits attached to the party's document statement.

(2) *Summary exhibits*. The contents of voluminous documentary evidence which cannot be conveniently examined at the hearing may be presented in the form of a chart, summary, or calculation. Absent leave of the Board, evidence supporting the summary exhibit must have been produced to the other parties in discovery and admitted as exhibits, and the summary exhibit must be disclosed to the other parties in the proceeding at least seven days before the hearing.

(d) *New exhibits for use in cross-examination or redirect examination*. Exhibits not submitted as part of written testimony may not be used at a hearing without leave of the Board. Leave to use such exhibits may be requested before or during the hearing. Requests to use an exhibit not submitted as part of written testimony and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

[87 FR 30077, May 17, 2022]

PART 223—OPT-OUT PROVISIONS

Sec.

223.1 Respondent's opt-out.
223.2 Libraries and archives opt-out procedures.
223.3 Class action opt-out procedures.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 13176, Mar. 9, 2022, unless otherwise noted.

§ 223.1 Respondent's opt-out.

(a) *Effect of opt-out on particular proceeding*. A respondent may opt out of a proceeding before the Copyright Claims Board (Board) pursuant to 17 U.S.C. 1506(i) following the procedures set forth in this section. A respondent's opt-out shall result in the dismissal of the claim without prejudice.

(b) *Content of opt-out notification*. The respondent's opt-out notification shall include—

(1) The docket number assigned by the Board and contained in either the *initial notice* served by the claimant or the *second notice;*

(2) The respondent's name;

(3) The respondent's mailing address;

(4) An affirmation that the respondent shall not appear before the Board with respect to the claim served by the claimant;

(5) A certification under penalty of perjury that the individual completing the notification is the respondent identified in the claim served by the claimant or is the legal counsel or *authorized representative* of the respondent identified in the claim and has been directed and authorized by the respondent to opt out of the particular proceeding; and

(6) The typed, printed, or handwritten signature of the respondent or its legal counsel or *authorized representative,* and, if the signature is handwritten, a typed or printed name.

(c) *Process of opting out.* Upon being served with a notice and claim, a respondent may complete the opt-out process by—

(1) Completing and submitting the Board's online opt-out notification form available through the Board's electronic filing system (eCCB) as identified in the *initial notice* and *second notice* and providing an email address for confirmation; or

(2) Completing and submitting the paper opt-out notification form included with the *initial notice* and *second notice*, providing a mailing address or email address to receive confirmation, and delivering it to the Board, either by—

(i) First-class mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) A third party commercial carrier, that guarantees delivery no later than two days from the day of deposit with the service.

(3) An online or paper opt-out notification is not complete unless the confirmation code, provided with both the *initial notice* and *second notice*, is included in the submission.

(d) *Effect of improper service.* If a respondent is improperly served under 37 CFR 222.5 and completes the opt-out process described in paragraph (c) of this section, a respondent's timely opt-out will still be effective and result in the dismissal of the claim without prejudice.

(e) *Timing of opt out.* The respondent has 60 days from the date of service or waiver of service to provide notice of its opt-out election. When the last day of that period falls on a weekend or a Federal holiday, the ending date shall be extended to the next Federal work day.

(1) When opting out via the online form under paragraph (c)(1) of this section, the respondent's opt-out notification must be submitted by 11:59 p.m. Eastern Time on the last day of the opt-out period.

(2) When opting out under paragraph (c)(2) of this section, the respondent's opt-out notification must be postmarked, dispatched by a commercial carrier, courier, or messenger, or hand-delivered to the Office no later than the 60-day deadline.

(f) *Extension of opt-out period.* The Board may extend the 60-day period to opt out in exceptional circumstances and in the interests of justice and upon written notice to the claimant. Either a respondent individually or the parties jointly may contact the Board through a Copyright Claims Attorney to request an extension of the opt-out period.

(g) *Multiple respondents.* In claims involving multiple respondents, each respondent who elects to opt out must separately complete the opt-out process.

(h) *Confirmation of opt-out.* When a respondent has completed the opt-out process, the Board shall notify all parties to the proceeding.

(i) *Effect of opt out on refiled claims.* If the claimant attempts to refile a claim against the same respondent(s), covering in substance the same acts and the same theories of recovery after the respondent's initial opt-out notification, the Board shall apply the prior opt-out election and dismiss the claim unless the claimant can demonstrate that the respondent affirmatively has agreed to resubmission of the parties' dispute to the Board for resolution.

(j) *Effect of opt-out on unrelated claims.* The respondent's opt-out for a particular claim shall not be construed as an opt-out for claims involving different acts or different theories of recovery.

[87 FR 17007, Mar. 25, 2022]

§ 223.2 Libraries and archives opt-out procedures.

(a) *Opt-out notification.* (1) A library or archives that wishes to preemptively opt out of participating in Copyright Claims Board (''Board'') proceedings under 17 U.S.C. 1506(aa) may do so by submitting written notification to the Board. The notification shall include a signed certification under penalty of perjury that the library or archives qualifies for the limitations on exclusive rights under 17 U.S.C. 108 and the signatory is authorized to submit the form on the library's or archives' behalf.

(2) The submission described in paragraph (a)(1) of this section shall list the

name and physical address of each library or archives to which the preemptive opt out applies and shall be signed by a person with the authority described in paragraph (c) of this section. The library or archives must also provide a point of contact for future correspondence, including phone number, mailing address, email address, and the website for the library or archives, if available, and shall notify the Board if this information changes.

(3) The Board will accept the facts stated in the submission described in paragraphs (a)(1) and (2) of this section, unless they are implausible or conflict with sources of information that are known to the Board or the general public.

(4) If a Federal court determines that an entity described in paragraph (a)(1) of this section does not qualify for the limitations on exclusive rights under 17 U.S.C. 108, that entity must inform the Board of that determination and submit a copy of the relevant order or opinion, if any, within 14 days after the determination is issued.

(5) An opt-out under this section extends to a library's or archives' employee acting within the scope of their employment, but does not apply to employees acting outside the scope of their employment.

(6) For the purposes of this section, the date that the Board posts the opt-out information on its website as described in paragraph (b) in this section, after receipt, review, and processing of the notification described in paragraph (a)(1) of this section, will be the effective date of a preemptive opt-out election, except as noted in paragraph (a)(9) of this section. A preemptive opt-out election would not compel dismissal of a claim that the Board has found compliant and has instructed the claimant to serve prior to the preemptive opt-out election's effective date. A respondent who wishes to opt out of such a claim should follow the directions provided in the served notice of proceeding.

(7) A library or archives may rescind its preemptive opt-out election under this section, such that it may participate in Board proceedings, by providing written notification to the Board in accordance with such instructions as are provided on the Board's website. A library or archives may submit no more than one such rescission notification per calendar year.

(8) The notification described in paragraph (a)(1) of this section shall be submitted to the Board in accordance with such instructions as are provided on the Board's website.

(9) A blanket opt-out filed by a library or archives in accordance with this section before April 8, 2022 will become effective on that date.

(b) *Review of eligibility*. (1) The Board will maintain on its website a public list of libraries and archives that have preemptively opted out of Board proceedings pursuant to paragraph (a) of this section. If the Register determines pursuant to paragraph (a)(3) of this section that an entity does not qualify for the preemptive opt-out provision, the Office will communicate to the point of contact described in paragraph (a)(2) of this section that it does not intend to add the entity to the public list, or that it intends to remove the entity from that list, and will allow the entity to provide evidence supporting its qualification for the exemption within 30 days. If the entity fails to respond, or if, after reviewing the entity's response, the Register determines that the entity does not qualify for the limitations on exclusive rights under section 108 of title 17, the entity will not be added to, or will be removed from, the public list. If the Register determines that the entity qualifies for the limitations on exclusive rights under 17 U.S.C. 108, the entity will be added to, or remain on, the libraries and archives preemptive opt-out list. This provision does not limit the Office's ability to request additional information from the point of contact listed pursuant to paragraph (a)(2) of this section. Any determination by the Register regarding an entity's qualifying status for the limitations on exclusive rights under 17 U.S.C. 108 is solely for the purpose of determining whether the entity qualifies for the preemptive opt out under 17 U.S.C. 1506(aa) and does not constitute a legal conclusion for any other purpose.

(2) A claimant seeking to assert a claim under this section against a library or archives, or an employee

thereof acting within the scope of their employment, that it believes is improperly included on the public list described in paragraph (b)(1) of this section may file the claim with the Board pursuant to 17 U.S.C. 1506(e) and applicable regulations. The claimant must include in its statement of material facts allegations sufficient to support that belief. If the Board concludes, as part of its review of the claim pursuant to 17 U.S.C. 1506(f), that the claimant has alleged facts sufficient to support the conclusion that the library or archives is ineligible for the preemptive opt-out, and the Register agrees, the library or archives will be given an opportunity to provide evidence supporting its qualification for the exemption pursuant to paragraph (a)(1) of this section. If the Register concludes that evidence submitted by the library or archives supports its qualification for the exemption, the library or archives will remain on the list and the associated allegations by the claimant will be stricken. After these allegations are stricken, if the claim includes other respondents and is otherwise complaint, the claimant will be instructed to proceed with service of the claim against the remaining respondents. Alternatively, if the Register concludes that the library or archives has not provided evidence to support its qualification for the exemption, the library or archives will be removed from the blanket opt-out list. The claim will then be reviewed for compliance and, if found to be compliant, the claimant will be instructed to proceed with service of the claim.

(3) Any determination made under paragraph (b)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(c) *Authority.* Any person with the authority to take legally binding actions on behalf of a library or archives in connection with litigation may submit a notification under paragraph (a) of this section.

(d) *Multiple libraries and archives in a single submission.* A notification under paragraph (a) of this section may include multiple libraries or archives in the same submission if each library or archives is listed separately in the submission and the submitter has the authority described under paragraph (c) of this section to submit the notification on behalf of all libraries and archives included in the submission.

§ 223.3 Class action opt-out procedures.

(a) *Opt-out or dismissal procedures.* Any party to an active proceeding before the Copyright Claims Board (''Board'') who receives notice of a pending or putative class action, arising out of the same transaction or occurrence as the proceeding before the Board, in which the party is a class member, shall either opt out of the class action or seek written dismissal of the proceeding before Board within 14 days of receiving notice of the pending class action. If a party seeks written dismissal of the proceeding before the Board, upon notice to all claimants and counterclaimants, the Board shall dismiss the proceeding without prejudice.

(b) *Filing requirement.* A copy of the notice indicating a party's intent to opt out of a class action proceeding must be filed with the Board within 14 days after the filing of the notice with the court.

(c) *Timing.* The time periods provided in paragraphs (a) and (b) of this section may be extended by the Board for good cause shown.

(d) *Failure to notify Board.* If a party fails to make a timely election under paragraph (a) of this section, the Board is authorized to take corrective action as it deems necessary, which may include dismissal of a pending claim before the Board with or without prejudice, notifying the class action court of any final determination by the Board, or vacating a final determination of the Board. The Board may, in its discretion, direct a party to show cause why action under paragraph (a) of this section was not taken.

PART 224—REVIEW OF CLAIMS BY OFFICERS AND ATTORNEYS

Sec.
224.1 Compliance review.
224.2 Dismissal for unsuitability.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 17007, Mar. 25, 2022, unless otherwise noted.

§ 224.1 Compliance review.

(a) *Compliance review by Copyright Claims Attorney.* Upon the filing of a claim or counterclaim with the Copyright Claims Board (Board), a Copyright Claims Attorney shall review the claim for compliance with 17 U.S.C. chapter 15 and this subchapter, as provided in this section.

(b) *Substance of compliance review.* The Copyright Claims Attorney shall review the claim or counterclaim for compliance with all legal and formal requirements for a claim or counterclaim before the Board, including:

(1) The provisions set forth under this subchapter;

(2) The requirements set forth in 17 U.S.C. 1504(c), (d), and (e)(1); and

(3) Whether the allegations in the claim or the counterclaim clearly do not state a claim upon which relief can be granted.

(c) *Issuing finding.* Upon completing a compliance review, the Copyright Claims Attorney shall notify the party that submitted the document in accordance with 37 CFR 222.5 and 17 U.S.C. 1506(f) by—

(1) Informing the claimant or counterclaimant that the claim or counterclaim has been found to comply with the applicable statutory and regulatory requirements and instructing the claimant to proceed with service under 37 CFR 222.5 and 17 U.S.C. 1506(g); or

(2) Informing the claimant or counterclaimant that the claim or counterclaim, respectively, does not comply with the applicable statutory and regulatory requirements and identifying the noncompliant issue(s) according to the procedure set forth in 17 U.S.C. 1506(f).

(d) *Dismissal without prejudice.* If the original claim and an amended claim were previously reviewed by the Copyright Claims Attorney and were found not to comply with the applicable statutory and regulatory requirements, and if the Copyright Claims Attorney concludes, following the submission of a second amended claim, that the claim still does not comply with the applicable statutory and regulatory requirements, the claim shall be referred to a Copyright Claims Officer who shall confirm whether the second amended claim complies with the applicable statutory and regulatory requirements. If the Copyright Claims Officer concurs with the conclusion of the Copyright Claims Attorney, the proceeding shall be dismissed without prejudice.

(e) *Clearance is not endorsement.* The finding that a claim or counterclaim complies with the applicable statutory and regulatory requirements does not constitute a determination as to the validity of the allegations asserted or other statements made in the claim or counterclaim.

(f) *No factual investigations.* For the purpose of the compliance review, the Copyright Claims Attorney shall accept the facts stated in the claim or counterclaim materials, unless they are clearly contradicted by information provided elsewhere in the materials or in the Board's records. The Copyright Claims Attorney shall not conduct an investigation or make findings of fact; however, the Copyright Claims Attorney may take administrative notice of facts or matters that are well known to the general public, and may use that knowledge during review of the claim or counterclaim.

§ 224.2 Dismissal for unsuitability.

(a) *Review by Copyright Claims Attorney.* During the compliance review under § 224.1, the Copyright Claims Attorney shall review the claim or counterclaim for unsuitability on grounds set forth in 17 U.S.C. 1506(f)(3). If the Copyright Claims Attorney concludes that the claim should be dismissed for unsuitability, the Copyright Claims Attorney shall recommend to the Board that the Board dismiss the claim and shall set forth the basis for that conclusion.

(b) *Dismissal by the Board for unsuitability.* (1) If, upon recommendation by a Copyright Claims Attorney as set forth in paragraph (a) of this section or at any other time in the proceeding upon the request of a party or on its own initiative, the Board determines that a claim or counterclaim should be dismissed for unsuitability under 17 U.S.C. 1506(f)(3), the Board shall issue an order stating its intention to dismiss the claim without prejudice.

(2) Within 30 days following issuance of an order under paragraph (b) of this section, the claimant or counterclaimant may request that the Board reconsider its determination of unsuitability. If the proceeding is active, the respondent or counterclaim respondent may file a response within 30 days following filing of the claimant's request. A request or response made under this paragraph shall not exceed 7 pages and shall meet the requirements set forth in § 220.5(b) of this subchapter.

(3) Following the expiration of the time for the respondent or counterclaim respondent to submit a response, the Board shall render its final decision whether to dismiss the claim for unsuitability.

(c) *Request by a party to dismiss a claim or counterclaim for unsuitability*. At any time, any party who believes that a claim or counterclaim is unsuitable for determination by the Board may file a request that shall not exceed five pages providing the basis for such belief. An opposing party may file a response within 14 days setting forth the basis for such opposition to the request. A request or response made under this paragraph shall meet the requirements set forth in § 220.5(a)(2) of this subchapter.

[87 FR 17007, Mar. 25, 2022, as amended at 87 FR 30081, May 17, 2022]

PART 225—DISCOVERY

Sec.

225.1 General practices.
225.2 Standard interrogatories.
225.3 Standard requests for the production of documents.
225.4 Additional discovery.
225.5 Disputes and sanctions.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30082, May 17, 2022, unless otherwise noted.

§ 225.1 General practices.

(a) *Standard discovery practice*. Except as otherwise provided in this section, discovery in proceedings before the Copyright Claims Board (Board) shall be limited to the methods set forth in this part and shall use the standard forms provided on the Board's website. Discovery responses and documents shall be served on the other parties in accordance with § 222.5(e) of this subchapter and shall not be filed with the Board unless as part of written testimony or as needed in support of other filings.

(1) *Certifications*. All discovery material exchanged among the parties must include a certification by the party submitting such material.

(i) For responses to interrogatories or any requests for admission permitted by the Board, the certification shall affirm that the responses are accurate and truthful to the best of the submitting party's knowledge.

(ii) For the production of documents, the certification shall affirm that the produced documents are genuine and unaltered to the best of the producing party's knowledge.

(2) *Form of requests to Board*. Requests to the Board related to discovery may be raised to the Board during a conference or by written request, as set forth in this part.

(3) *Reasonable investigation*. Parties shall make a reasonable investigation under the circumstances to adequately respond to discovery requests.

(b) *Timing of discovery*. The exchange of discovery material shall take place at the times and within the deadlines specified by the scheduling order. The Board may modify the discovery deadlines set forth in the scheduling order at the request of any party upon a showing of good cause or on its own initiative. Such requests may be made orally during a conference with the Board or by written request. Written requests for modification of a discovery deadline and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(c) *Conferences*. The Board shall hold a pre-discovery conference and a post-discovery conference, as set forth in § 222.11(b) of this subchapter. The Board may hold additional conferences to manage discovery and resolve any disputes, at its own election or at the request of any party. Requests for a discovery conference not involving a dispute and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. Requests for a discovery conference involving a dispute and any responses thereto shall

follow the procedures set forth in §220.5(a)(2). Such conferences may be held by one or more Copyright Claims Officers. Conferences shall be held virtually.

(d) *Documents*. As used in this part, the term ''document'' shall refer to any tangible piece of information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, whether in written or electronic form, an object, or otherwise. The Board shall read this definition broadly so that there is a comprehensive production of materials by each side needed to fairly decide matters before the Board, so long as that production can be easily accomplished by a layperson.

[87 FR 30082, May 17, 2022; 87 FR 36061, June 15, 2022]

§225.2 Standard interrogatories.

(a) *General*. Parties in an *active proceeding* shall use the set of *standard interrogatories* provided on the Board's website. *Standard interrogatories* shall consist of information pertaining to:

(1) The identity of witnesses whom the parties plan to use in the proceeding, including contact information for the witnesses, if known, and a brief description of the subject matter on which they may testify;

(2) The identity of any other individuals who may have material information related to the claims or defenses, including contact information for the individuals, if known;

(3) Any agreement or other relationship between the parties relevant to the claim;

(4) Any harm suffered or damages sought; and

(5) Any materially responsive documents that the party is aware exist or once existed, but are not in the possession of that party.

(b) *For a party asserting infringement*. In addition to paragraph (a) of this section, the *standard interrogatories* for a party asserting an infringement claim or responding to a claim for non-infringement shall consist of information pertaining to:

(1) The allegedly infringed work's copyright registration, to the extent such information differs from or adds to information provided in the claim;

(2) For works requiring copyright formalities, the extent the allegedly infringed work complied with such copyright formalities;

(3) The party's ownership of the copyright in the allegedly infringed work;

(4) Publication of the allegedly infringed work;

(5) The creation date and creation process for the allegedly infringed work, including whether the work is a joint or derivative work or was created through employment or subject to an agreement;

(6) Where the allegedly infringed work is a derivative work, the preexisting elements in the work, including ownership of those preexisting elements, and rights to use those preexisting elements;

(7) A description of how the party believes the alleged infringer gained access to the allegedly infringed work;

(8) The basis for the party's belief that the opposing party's activities constitute infringement of the allegedly infringed work;

(9) The discovery of the opposing party's alleged infringement by the party;

(10) A description of any harm suffered and, to the extent known, a calculation of the damages requested by the party as a result of the alleged infringement; and

(11) Any attempts by the party to cause the infringement to be ceased or mitigated prior to bringing the claim.

(c) *For a party asserting non-infringement*. In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party responding to an infringement claim or asserting a claim for non-infringement shall consist of information pertaining to:

(1) The party's ownership of the copyright in the allegedly infringing material;

(2) The dissemination history of the allegedly infringing material;

(3) The creation date and creation process for the allegedly infringing material, including whether any allegedly infringing work is a joint or derivative

work or was created through employment or subject to an agreement;

(4) Where the allegedly infringing material is a derivative work, the preexisting elements in the work, including ownership of those preexisting elements, and rights to use those preexisting elements;

(5) Any information indicating that the party alleging infringement does not own a copyright in the allegedly infringed work;

(6) All defenses to infringement asserted by the party and a detailed basis for those defenses. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the response to an infringement claim or an amendment of a claim for non-infringement;

(7) The basis for any other reasons the party believes that its actions do not constitute infringement;

(8) Any continued use or dissemination of the allegedly infringing material; and

(9) For a party responding to infringement claims or counterclaims, the revenues and profits the party has received that are directly related to the sale or use of the allegedly infringing material, as well as the deductible expenses directly related to that sale or use, and any elements of profit for that sale or use that the party believes are attributable to factors other than the copyrighted work.

(d) *For a party asserting misrepresentation*. In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party asserting a claim of misrepresentation under 17 U.S.C. 512(f) shall consist of information pertaining to:

(1) The notification or counter notification that allegedly contained a misrepresentation;

(2) The identity of the internet service provider to which the notification or counter notification was sent;

(3) Identification and a description of any communications with the internet service provider, the parties, or others related to the notification or counter notification at issue;

(4) The basis for the party's belief that the notification or counter notification included a misrepresentation; and

(5) The harm, including a description and calculation of damages, caused by the alleged misrepresentation.

(e) *For a party responding to misrepresentation claims*. In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party responding to a claim of misrepresentation under 17 U.S.C. 512(f) shall consist of information pertaining to:

(1) All defenses asserted to the misrepresentation claim and the basis for those assertions. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the response;

(2) The basis for any other reasons the party believes that its statement did not constitute a misrepresentation; and

(3) Identification and a description of any communications with the internet service provider, the parties, or others related to the notification or counter notification at issue.

(f) *Duty to update*. A party has an obligation to update its interrogatory responses and serve updated responses on the other parties as soon as practicable after the discovery of new or updated information.

§ 225.3 Standard requests for the production of documents.

(a) *General*. Parties in an *active proceeding* shall use the relevant set of *standard requests for the production of documents* provided on the Board's website. *Standard requests for the production of documents* shall include copies of:

(1) All documents the party is likely to use in support of its claims or defenses;

(2) All other documents of which the party is reasonably aware that conflict with the party's claims or defenses in the proceeding;

(3) All documents referred to in, or that were used in preparing, any of the party's responses to *standard interrogatories;* and

(b) *For a party asserting infringement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting an infringement claim or responding to a claim for non-infringement shall include copies of:

(1) The work claimed to be infringed, its copyright registration, and all correspondence with the Copyright Office regarding that registration;

(2) The allegedly infringing material, if reasonably available;

(3) Where the allegedly infringed work is a derivative work, documents showing the preexisting works used and related to ownership of and rights to use those preexisting elements;

(4) Documents related to the allegedly infringing material, including communications about the allegedly infringing material;

(5) Documents showing or negating the ownership or rights of the party claiming infringement in the works at issue, including agreements showing the ownership or transfer or rights in the works;

(6) Documents sufficient to show the damages suffered by the party as a result of the alleged infringement; and

(7) Documents showing attempts by the party to cause the cessation or mitigation of infringement prior to bringing the claim.

(c) *For a party asserting non-infringement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party responding to an infringement claim or asserting a claim for non-infringement shall include copies of:

(1) The allegedly infringing material;

(2) Documents related to the allegedly infringed work, including communications regarding the allegedly infringed work;

(3) Documents related to the creation of the allegedly infringing material, including documents showing or negating rights to use the allegedly infringing material; and

(4) For a party responding to infringement claims or counterclaims, documents sufficient to show the revenues and profits the party has received directly related to the sale or use of the allegedly infringing material, as well as the deductible expenses directly related to that sale or use, and the elements of profit for that sale or use that the party believes are attributable to factors other than the copyrighted work.

(d) *For a party asserting misrepresentation.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting a claim of misrepresentation under 17 U.S.C. 512(f) shall include copies of:

(1) The notification or counter notification at issue;

(2) Communications with the internet service provider concerning the notification or counter notification at issue;

(3) Documents directly pertaining to the truth or falsity of any representations made in the notification or counter notification; and

(4) Documents sufficient to show the damages suffered by the party as a result of the alleged misrepresentation.

(e) *For party responding to misrepresentation claims.* In addition to the information in paragraph (a) of this section, *the standard requests for the production of documents* for a party responding to a claim of misrepresentation under 17 U.S.C. 512(f) shall include copies of:

(1) Communications with the internet service provider concerning the notification or counter notification at issue; and

(2) Documents directly pertaining to the truth or falsity of any representations made in the notification or counter notification.

(f) *Document searches and productions*—(1) *General.* Each party shall have an obligation to conduct a reasonable search for any responsive documents of any files in its possession or under its control, including the files of any of the party's agents, employees, representatives, or others acting on the party's behalf who the party reasonably believes may have responsive documents.

(2) *Electronically stored information.* Documents responsive to the *standard requests for the production of documents,* or any additional requests permitted

by the Board, shall include electronically stored information (ESI), including emails and computer files. A reasonable search under the circumstances shall include the ESI of the party and the party's agents, employees, representatives, or others acting on the party's behalf who the party reasonably believes may have responsive documents, except that—

(i) ESI searches need not exceed manual searches that are easily accomplished by a layperson; and

(ii) Parties need not conduct searches that would reasonably require the assistance of third parties, such as a document vendor that the party would have to hire to assist with or accomplish document collection or storage.

(3) *Voluminous productions.* Responses to document requests that include large amounts of irrelevant or duplicative material are prohibited and may constitute *bad-faith conduct.*

(4) *Duty to update.* A party has an obligation to preserve all material documents and to update its production of documents by providing to the other parties any documents it later finds responsive to the Board's *standard requests for the production of documents* or any other document requests allowed by the Board as soon as practicable after the discovery of such documents.

(g) *Privileged documents.* Confidential communications with external counsel or in-house counsel reflecting or seeking legal advice related to the merits of the proceeding shall be considered privileged and need not be produced or logged. Parties must seek leave of the Board to withhold additional documents as privileged by filing a request with the Board. Requests to withhold additional documents as privileged and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

[87 FR 30082, May 17, 2022; 87 FR 36061, June 15, 2022]

§ 225.4 Additional discovery.

(a) *Requests for additional discovery.* Any party may request additional discovery within the deadlines set forth in the scheduling order.

(1) *Allowable discovery.* Except for the standard discovery provided in this part, any additional discovery requested must be narrowly tailored to the issues at hand, not covered by the standard discovery set forth in this part, highly likely to lead to the production of information relevant to the core issues of the matter, and not result in an undue burden on the party responding to the request.

(2) *Standard for additional discovery.* The Board will grant a request for additional discovery upon a showing of good cause. In considering a request for additional discovery, the Board shall balance the needs and circumstances of the case against the burden of additional discovery on any party, along with the amount in dispute and the overall goal of efficient resolution of the proceeding.

(3) *Consent from parties.* Prior to filing a request for additional discovery, the requesting party should make reasonable efforts to secure the consent of, or a compromise with, the other party regarding the proposed additional discovery request.

(4) *Form of request.* Requests for additional discovery and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. Unless otherwise specified in this section, a request for additional discovery must—

(i) Specifically indicate the type of additional discovery requested and the information sought, including the specific requests themselves;

(ii) Set forth in detail the need for the request; and

(iii) Indicate whether the other parties consent or object to the request.

(b) *Requests for expert witnesses.* An expert witness may be used in a proceeding only with leave of the Board. The use of expert witnesses in proceedings before the Board is highly disfavored and requests shall be rarely granted.

(1) *Standard for permitting expert witnesses.* The Board shall grant a request by a party to introduce an expert witness only in exceptional circumstances and upon a showing that the case cannot fairly proceed without the use of the expert. In considering a request for an expert witness, the Board shall balance the needs and circumstances of the case, and whether the request is made by one party or jointly among

the parties, against the burden that permitting the expert testimony would impose on any other party, the costs to the opposing party of retaining a rebuttal witness, the amount in dispute, and the overall goal of efficient resolution of the proceeding. If the Board grants a request by a party to introduce an expert witness, an opposing party shall have the opportunity to introduce a rebuttal expert witness as a matter of course within an appropriate amount of time set by the Board. The Board will set a schedule for the service of the expert report and any rebuttal report and will adjust the dates in the existing scheduling order as needed.

(2) *Form of request.* Requests for an expert witness and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. The request must specifically indicate the topics of the expert's proposed testimony, the name of the proposed expert, and the anticipated cost of retaining the expert, and must set forth the basis and justifications for the request, and indicate whether the other parties consent or object to the request.

(3) *Form of expert testimony.* Any expert testimony permitted by the Board shall be submitted along with the offering party's written direct or response testimony in the form of an expert statement. An expert statement must—

(i) Be sworn under penalty of perjury by the expert witness;

(ii) Be organized into numbered paragraphs;

(iii) Be detailed as to the substance of the expert's opinion and the basis and reasons therefor;

(iv) Disclose the facts or data considered by the expert witness in forming the expert witness's opinions;

(v) Describe the expert witness's qualifications, including a list of all publications authored and speaking engagements in the previous 10 years;

(vi) Include a list of all other cases in which the expert witness testified as an expert at trial or by deposition during the previous four years; and

(vii) Include a statement of the compensation to be paid for the study and testimony in the case.

(4) *Unauthorized expert testimony.* Any expert testimony that is introduced in any way without the Board's express permission shall be stricken by the Board and shall not be considered in the Board's determination.

(c) *Requests for admission.* Requests for admission may be served in a proceeding only with leave of the Board. Requests for admission are disfavored and requests to serve requests for admission may only be granted at the Board's discretion upon a showing of good cause. A request to serve requests for admission, and any responses, shall follow the procedures set forth in paragraph (a) of this section.

(1) *Subject matter.* Requests for admission may pertain to:

(i) Facts, the application of law to fact, or opinions about either; and

(ii) The genuineness of any described documents, a copy of which must be attached to the request for admission.

(2) *Form of requests for admission.* Each matter must be separately stated in a request for admission in a numbered paragraph. Compound requests for admission shall not be permitted.

(3) *Responses to requests for admission.* A response to a request for admission must be served by the time specified by the Board. A matter admitted is conclusively established unless the Board, on request and for good cause shown, permits the admission to be withdrawn or amended. If a matter is not admitted, the answer must specifically deny it or state in detail why the responding party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter, and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest. The responding party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable investigation and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(4) *Failure to respond.* A matter is not automatically admitted if a party fails to respond to a request for admission within the required timeframe. However, the Board may deem it admitted

in the Board's discretion subject to the Board's power to apply adverse inferences to discovery violations under 17 U.S.C. 1506(n)(3) according to the procedures set forth in § 225.5.

(d) *Depositions.* Depositions shall not be permitted in proceedings before the Board.

§ 225.5 Disputes and sanctions.

(a) *Obligation to attempt resolution.* Parties shall attempt in good faith to resolve any discovery disputes without the involvement of the Board. A party must confer with an opposing party in an attempt to reach a resolution prior to raising any discovery dispute with the Board.

(b) *Request for conference to resolve dispute.* If an attempt to resolve a discovery dispute fails, the party seeking discovery may file a request for a conference with the Board. Requests for conference to resolve a discovery dispute and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. The request may attach communications related to the discovery dispute or documents specifically discussed in the request related to the inadequacy of the document production and shall:

(1) Describe the dispute;

(2) State that party's position with respect to the dispute;

(3) Explain the attempts made to resolve the dispute without the involvement of the Board; and

(4) Attach any inadequate interrogatory responses or inadequate request for admission responses.

(c) *Determination by Board.* Following receipt of the request and any response, the Board may schedule a conference to address the discovery dispute in its discretion. One or more Officers may participate in the conference. During or following the conference, or, if no conference is held, after the Board reviews the request and any responses, the Board shall issue an order resolving the discovery dispute and, in the event of a decision in favor of the aggrieved party, setting a deadline for compliance.

(d) *Failure to comply with order.* If a party fails to timely comply with the Board's discovery order, the party seeking discovery may send a notice to the noncompliant party giving the noncompliant party 10 days to comply. If the noncompliant party fails to comply within 10 days of receipt of the notice, the aggrieved party may file a request for sanctions with the Board.

(e) *Sanctions*—(1) *Form of request for sanctions.* A request for sanctions and any response thereto shall be uploaded to eCCB and shall meet the requirements set forth in § 220.5(a)(2) of this subchapter. A request for sanctions shall attach the relevant and allegedly inadequate discovery responses already provided by the opposing party, except for disputes pertaining to responses to document requests, and shall set forth the basis for the request.

(2) *Standard for granting request.* Following receipt of a request for sanctions and any response from the opposing party, the Board may hold a conference to address the request for sanctions. In the Board's sole discretion and upon good cause shown, sanctions may be imposed if the opposing party is found to be noncompliant with the Board's discovery order.

(3) *Relief.* Sanctions imposed for noncompliance with a discovery order of the Board may include an adverse inference with respect to the disputed facts directly related to the discovery in question against the noncompliant party.

(4) *Implications for award of attorneys' fees and costs.* The Board may consider the assessment of discovery sanctions when considering the awarding of attorneys' fees and costs during a *final determination*.

PART 226—SMALLER CLAIMS

Sec.

226.1 General.
226.2 Requesting a smaller claims proceeding.
226.3 Effect of counterclaims on a smaller claims proceeding.
226.4 Nature of a smaller claims proceeding.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30085, May 17, 2022, unless otherwise noted.

§ 226.1 General.

When total monetary relief sought in a claim does not exceed $5,000 (exclusive of attorneys' fees and costs), the

claimant may choose to have the proceeding adjudicated under the procedures set forth in this part. The provisions of 37 CFR parts 220, 221, 223, 224, 227, 228, 229, 230, 231, 232, 233, and 234 and 37 CFR 222.1 through 222.10, 222.17, and 222.19 shall also apply to proceedings adjudicated under this part and no other procedures other than those set forth in this part shall apply, unless the Copyright Claims Board (Board) decides in its discretion that such application or non-application would not be in the interest of justice.

§ 226.2 Requesting a smaller claims proceeding.

A claimant may request consideration of a claim under the smaller claim procedures in this part at the time of filing a claim. The claimant may change its choice as to whether to have its claim considered under the smaller claim procedures at any time before service of the *initial notice*. If the claimant changes its choice, but the *initial notice* has already been issued, the claimant shall request reissuance of the *initial notice* indicating the updated choice. Once the claimant has served the *initial notice* on any respondent, the claimant may not amend its choice without consent of the other parties and leave of the Board.

§ 226.3 Effect of counterclaims on a smaller claims proceeding.

Where a claimant has chosen to proceed via a smaller claims proceeding, a respondent only may assert a counterclaim that seeks total monetary relief of $5,000 or less (exclusive of attorneys' fees or costs). Any permissible counterclaims asserted by a respondent shall be adjudicated under the procedures set forth in this part.

§ 226.4 Nature of a smaller claims proceeding.

(a) *Proceeding before a Copyright Claims Officer*. A smaller claims proceeding shall be heard by one Copyright Claims Officer (Officer). One of the three Officers shall hear smaller claims proceedings on a rotating basis at the Board's discretion.

(b) *Initial scheduling order*. Upon confirmation that a proceeding has become active and the claimant has paid the second payment of the filing fee set forth in 37 CFR 201.3(g), and after completion of the 14-day period specified in the Board's order pursuant to § 222.7 of this subchapter, the Board shall issue an initial scheduling order that shall include the dates or deadlines for filing of a response to the claim and any counterclaims by the respondent and an initial conference with the Officer presiding over the proceeding. The Board or presiding Officer may issue additional scheduling orders or amend the scheduling order at its own discretion or upon request of a party pursuant to § 222.11(d) of this subchapter.

(c) *Initial conference*—(1) *In general*. An initial conference will take the place of the pre-discovery conference held in non-smaller claims proceedings. During the initial conference, the presiding Officer shall explain the steps of the proceeding, and the parties shall discuss the nature of the claims and any counterclaims and defenses as well as the possibility of settlement with the presiding Officer. While the presiding Officer in a smaller claims proceeding may discuss settlement with the parties, if a separate settlement conference is held, that settlement conference shall be held before an Officer who is not the presiding Officer.

(2) *Discovery*. During the initial conference, the presiding Officer shall discuss with the parties whether additional documents and information beyond any materials attached to the claim and response are necessary to reach a determination. Any order requiring documents or information to be produced shall be narrowly tailored to the merits of the proceeding and highly likely to lead to the production of information relevant to the core issues of the matter and not result in an undue burden on any party. If the presiding Officer determines that such documents and information are necessary, the presiding Officer shall order the parties to serve such documents and information on each other and set the date for such service to be accomplished.

(d) *Merits conference*—(1) *Timing of merits conference*. During or following the initial conference, the presiding Officer shall schedule a conference to further discuss the merits of the case.

(2) *Submission of materials before merits conference.* No later than 14 days before the merits conference, each party—

(i) Shall file with the presiding Officer evidence it wishes to be considered for the presiding Officer to decide the case as well as any evidence requested by the presiding Officer. All such evidence must have been served on the other parties to the proceeding before such filing, unless the evidence was received from the other side;

(ii) May submit a written statement that set forth its positions as to the claims, defenses, and any counterclaims, along with any damages sought and the types of damages sought. Such written statement shall follow the procedures set forth in § 220.5(b) of this subchapter and shall be limited to seven pages. No written responses shall be permitted; and

(iii) May submit witness statements that comply with § 222.15(b)(2) of this subchapter. No later than seven days before the merits conference, an opposing party may request that the witness whose statement was submitted appear at the merits conference so that the party may ask the witness questions relating the witness's testimony. The failure of a witness to appear in response to such a request shall not preclude the presiding Officer from accepting the statement, but the presiding Officer may take the inability to question the witness into account when considering the weight of the witness's testimony.

(3) *Failure to submit evidence.* If a party fails to submit evidence in accordance with the presiding Officer's request, or submits evidence that was not served on the other parties or provided by the other side, the presiding Officer may discuss such failure with the parties during the merits conference or may schedule a separate conference to discuss the missing evidence with the parties. The presiding Officer shall determine an appropriate remedy, if any, for the failure to submit evidence in accordance with the presiding Officer's request, including but not limited to drawing an adverse inference with respect to disputed facts, pursuant to 17 U.S.C. 1506(n)(3), if it would be in the interests of justice.

(4) *Conduct of merits conference.* During the merits conference, each party shall have an opportunity to address the materials submitted by any other party and to present their position on the claims, defenses, and any counterclaims, along with any damages sought, if any, to the presiding Officer. The presiding Officer may also ask questions to any party or any witness.

(e) *Proposed findings of fact.* Following the merits conference, the presiding Officer shall prepare proposed findings of fact and shall serve the proposed findings of fact on each party. The proposed findings of fact shall include any adverse inference that the presiding Officer is considering applying due to a failure to submit evidence pursuant to paragraph (d)(3) of this section. Within 21 days from the date the proposed findings of fact are served—

(1) *Response to proposed findings of fact.* Any party may submit a written response to the proposed written findings of fact, including any adverse inferences identified by the presiding Officer. Such written response shall follow the procedures set forth in § 220.5(b) and be limited to five pages. Such written responses may not reference or attach any evidence that was not previously filed, unless the presiding Officer grants leave to do so. If the presiding Officer grants leave to reference or attach additional evidence, the other parties shall be provided an opportunity to respond to the new evidence in writing or during a conference;

(2) *Statement as to damages.* To the extent the claimant or counterclaimant has not already made an election as to whether it is seeking actual damages or statutory damages, a claimant or counterclaimant seeking damages shall file a statement, which may be included in its response to the proposed findings of fact, as to whether the party is seeking statutory damages or actual damages and any profits. This election may be changed at any time up until a *final determination;* and

(3) *Statement as to voluntary agreement to stop or mitigate unlawful activities.* A respondent or counterclaim respondent may inform the presiding Officer, at any time up to and including the merits conference, that if found liable on a

claim or counterclaim, it would voluntarily agree to an order to cease or mitigate the unlawful activity. Such an election may be considered in appropriate cases by the presiding Officer in determining an amount of damages, if any, pursuant to 17 U.S.C. 1504. Such information will not be considered by the presiding Officer in any way in making its determination as to liability, and shall be considered only as to damages.

(f) *Final determinations.* (1) After considering the information and arguments provided by the parties during the merits conferences and any other conferences ordered by the presiding Officer, along with any submissions filed by the parties, the presiding Officer shall issue a *final determination*.

(2) If, as described in §227.1 of this subchapter, a respondent fails to appear or participate in a proceeding brought under the procedures set forth in this part, the presiding Officer shall transfer the proceedings to proceed under the rules governing default proceedings under part 227 of this subchapter, which may result in a *default determination* or dismissal of the claim. If proceedings continue under the rules governing default proceedings under part 227, any *default determination* must be issued by no fewer than two Officers. If the respondent cures a missed deadline or requirement, as described under §227.1(c) of this subchapter, the proceeding shall resume under the procedures set forth in this part and the presiding Officer shall issue a revised scheduling order, if necessary.

(g) *Additional conferences.* In its discretion or upon the request of any party, the presiding Officer may hold additional conferences, including to manage the conduct of the proceeding, address disputes between the parties, and engage in further discussion of the claims, counterclaims, or defenses and supporting evidence. Requests for a conference and any responses thereto shall follow the procedures set forth in §220.5(a)(1) of this subchapter.

(h) *No expert testimony.* Parties may not submit expert testimony for consideration. Any expert testimony submitted shall be disregarded by the assigned Officer.

[87 FR 30085, May 17, 2022; 87 FR 36061, June 15, 2022]

PART 227—DEFAULT

Sec.

227.1 Failure by respondent or counterclaim respondent to appear or participate in proceeding.
227.2 Submission of evidence by claimant or counterclaimant in support of default determination.
227.3 Notice of proposed default determination.
227.4 Opportunity for respondent or counterclaim respondent to submit evidence.
227.5 Issuance of determination.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30087, May 17, 2022, unless otherwise noted.

§227.1 Failure by respondent or counterclaim respondent to appear or participate in proceeding.

(a) *Notice of missed deadline or requirement.* If a respondent or counterclaim respondent fails to file a response or fails, without justifiable cause, to meet any filing deadline or other requirement set forth in the scheduling order or other order, upon notice of a party or by its own initiative, the Copyright Claims Board (Board) may issue a notice to the respondent or counterclaim respondent following the missed deadline or requirement. Requests to issue a notice regarding a missed deadline or requirement and any responses thereto shall follow the procedures set forth in §220.5(a)(1) of this subchapter.

(b) *Contents of default notice*—(1) *First default notice.* A notice issued under this section shall inform the respondent or counterclaim respondent that failure to participate in the proceeding may result in the Board entering a *default determination* against the respondent or counterclaim respondent, including dismissal of any counterclaims asserted by the defaulting respondent, and shall explain the legal effects of a *default determination*. The notice shall provide the respondent or counterclaim respondent with 30 days from the date of the notice to cure the missed deadline or requirement. The notice shall

be issued to the respondent or counterclaim respondent through eCCB, as well as by mail and all known email addresses.

(2) *Second default notice.* If the respondent or counterclaim respondent has failed to respond within 15 days after the first notice of the pendency of the *default determination*, the Board shall send a second notice to the respondent or counterclaim respondent according to the procedures set forth in paragraph (b)(1) of this section. Such notice shall attach the first notice and shall remind the respondent or counterclaim respondent that it must cure the missed deadline or requirement within 30 days from the date of the first notice.

(c) *Response to notice.* If the respondent or counterclaim respondent cures the missed deadline or requirement within the time specified by the notice, the proceeding shall resume and the Board shall issue a revised scheduling order, if necessary. If the respondent or counterclaim respondent fails to timely cure but submits a response that indicates an intent to re-engage with the proceeding pursuant to the procedures set forth in § 220.5(a)(1) of this subchapter, the Board shall consider the response and either provide the respondent or counterclaim respondent with additional time to meet the deadline or proceed with the *default determination* process. If the respondent or counterclaim respondent fails to cure the missed deadline or requirement within the time specified by the notice and does not otherwise respond to the notice, the Board shall require the claimant or counterclaimant to submit evidence in support of a *default determination*, as set forth in § 227.2.

(d) *Multiple missed deadlines.* A respondent or counterclaim respondent may cure a missed deadline according to the procedure set forth in this section at least twice without default being issued. If the respondent or counterclaim respondent misses a third deadline in the scheduling order without good cause, the Board may, in its discretion, proceed directly to requiring submission of evidence to proceed with a *default determination* as set forth in § 227.2.

§ 227.2 Submission of evidence by claimant or counterclaimant in support of default determination.

(a) *General.* If a respondent or counterclaim respondent fails to appear or ceases to participate in the proceeding and the Board elects to proceed to a *default determination*, the Board shall require the claimant or counterclaimant to submit written direct testimony, as set forth in § 222.15(b) of this subchapter.

(b) *Additional evidence.* Following submission of the claimant's or counterclaimant's written testimony in support of a *default determination*, the Board shall consider the claimant's or counterclaimant's submissions and may request any additional evidence from the claimant or counterclaimant within the claimant's or counterclaimant's possession.

§ 227.3 Notice of proposed default determination.

(a) *Consideration of evidence.* Following submission of evidence by the claimant or counterclaimant, as set forth in § 227.2, the Board shall review such evidence and shall determine whether it is sufficient to support a finding in favor of the claimant or counterclaimant under applicable law. As part of its review, the Board shall consider whether the respondent or counterclaim respondent has a meritorious defense. If the Board finds the evidence sufficient to support a finding in favor of the claimant or counterclaimant, it shall determine the appropriate relief and damages, if any, to be awarded.

(1) If the Board determines that the evidence is sufficient to support a finding in favor of the claimant or counterclaimant, the Board shall prepare a proposed *default determination*.

(2) If the Board determines that the evidence is insufficient to support a finding in favor of the claimant or counterclaimant, the Board shall prepare a proposed determination dismissing the proceeding without prejudice and shall provide written notice of such proposed determination to the claimant or counterclaimant. The claimant or counterclaimant may submit a response to the proposed determination within 30 days of the date of

the notice of proposed determination. Such response shall follow the procedures set forth in § 220.5(b) of this subchapter and be limited to seven pages. After considering any response from the claimant or counterclaimant, the Board shall either maintain its proposed determination and dismiss the proceeding without prejudice or determine that the evidence is sufficient to support a finding in favor of the claimant or counterclaimant and prepare a proposed *default determination*.

(b) *Proposed default determination*. The proposed *default determination* shall include a finding in favor of the claimant or counterclaimant and the damages awarded, if any. The proposed *default determination* shall also include dismissal of any counterclaims asserted by the defaulting respondent.

(c) *Notice to respondent or counterclaim respondent*. The Board shall provide written notice to the respondent or counterclaim respondent of the pendency of the *default determination* and the legal significance of the *default determination*, including any liability for damages, if applicable, as set forth in 17 U.S.C. 1506(u)(2). The notice shall be accompanied by the proposed *default determination* and shall provide the respondent or counterclaim respondent 30 days, beginning on the date of the notice, to submit any evidence or other information in opposition to the proposed *default determination*.

§ 227.4 Opportunity for respondent or counterclaim respondent to submit evidence.

(a) *Response to notice by respondent or counterclaim respondent*. The respondent or counterclaim respondent may submit in writing any evidence or information in opposition to the proposed *default determination* within 30 days of the issuance of the proposed *default determination* absent an extension of that time by the Board. The form of that response shall follow the procedures for written response testimony under § 222.15(b) of this subchapter. If the respondent or counterclaim respondent fails to timely submit evidence but submits a response that indicates an intent to submit evidence in opposition to the proposed *default determination*, the Board shall consider the response and either provide the respondent or counterclaim respondent with additional time to submit evidence or proceed with issuing the *default determination*.

(b) *Response to respondent's or counterclaim respondent's submissions*. If the respondent or counterclaim respondent provides any evidence or other information in response to the notice of the pending *default determination*, the other parties to the proceeding shall be provided an opportunity to address such a submission by following the procedures for written reply testimony under § 222.15(c) of this subchapter within 21 days of the respondent's submission.

(c) *Hearings*. The Board may hold a hearing related to *default determinations* at its discretion.

§ 227.5 Issuance of determination.

(a) *Determination after respondent or counterclaim respondent submits evidence*. If the respondent or counterclaim respondent provides evidence or information as set forth in § 227.4, the Board shall consider all submissions, including any responses to the respondent's or counterclaim respondent's submission. The Board then shall maintain or amend its proposed *default determination*. The resulting determination shall not be a *default determination* and instead shall be a *final determination*. The respondent or counterclaim respondent may not challenge such determination under 17 U.S.C. 1508(c)(1)(C) and may only request reconsideration pursuant to 17 U.S.C. 1506(w) and the procedures set forth in part 230 of this subchapter.

(b) *Determination after respondent or counterclaim respondent fails to respond to notice*. If the respondent or counterclaim respondent fails to respond to the notice of pending *default determination*, the Board shall issue the proposed *default determination* as a *final determination*. The respondent or counterclaim respondent may only challenge such determination to the extent permitted under 17 U.S.C. 1508(c) or the procedures set forth in paragraph (c) of this section.

(c) *Vacating a default determination*. If additional proceedings have not been initiated under 17 U.S.C. 1508(c), the respondent or counterclaim respondent may request in writing that the *default*

determination be vacated and provide the reasons why the decision should be vacated. A request to vacate the *default determination* must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter; and a response to that request must be filed within 30 days of the request to vacate, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b). The Board may vacate the *default determination* in the interests of justice.

PART 228—CLAIMANT'S FAILURE TO PROCEED

Sec.

228.1 Claimant or counterclaimant's failure to complete service.
228.2 Claimant or counterclaimant's failure to prosecute.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30088, May 17, 2022, unless otherwise noted.

§ 228.1 Claimant or counterclaimant's failure to complete service.

(a) *Failure to serve a respondent who is not a necessary party.* If a claimant fails to timely complete service on a respondent who is not a necessary party, pursuant to § 222.14 of this subchapter, the Copyright Claims Board (Board) shall dismiss that respondent from the proceeding without prejudice. The proceeding shall continue against any remaining respondents.

(b) *Failure to serve a respondent who is a necessary party.* If a claimant fails to timely complete service on a respondent who is a necessary party, pursuant to § 222.14 of this subchapter, the Board shall dismiss the proceeding without prejudice.

(c) *Complete failure to serve respondents.* For a claim to proceed, a claimant must complete service on at least one respondent. If a claimant does not timely file any proof of service, the Board shall dismiss the proceeding without prejudice.

§ 228.2 Claimant or counterclaimant's failure to prosecute.

(a) *General.* If a claimant or counterclaimant fails to proceed in an *active proceeding* without justifiable cause, as demonstrated by a failure to meet any filing deadline or requirement set forth in the scheduling order or other order, upon request of a party or on its own initiative, the Board shall issue a notice following the missed deadline or requirement. Requests to issue a notice regarding a missed deadline or requirement and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Contents of failure to prosecute notice.* (1) A notice issued under paragraph (a) of this section shall inform the claimant or counterclaimant that failure to proceed in the proceeding may result in the Board issuing a determination dismissing the claimant's or counterclaimant's claims, including an award of attorneys' fees and costs where appropriate, and shall explain the legal effects of such a determination. The notice shall provide the claimant or counterclaimant with 30 days, beginning on the date of the notice, to respond to the notice and meet the missed deadline or requirement. The notice shall be issued to the claimant or counterclaimant by mail and all known email addresses.

(2) If the claimant or counterclaimant has failed to respond 15 days after the notice of the failure to proceed, the Board shall send a second notice to the claimant or counterclaimant according to the procedures set forth in paragraph (b)(1) of this section. Such notice shall attach the first notice and shall remind the claimant or counterclaimant that it must respond and meet the missed deadline or requirement within 30 days from the date of the first notice.

(c) *Response to failure to prosecute notice.* (1) If the claimant or counterclaimant cures the missed deadline or requirement within the time specified by the notice, the proceeding shall resume and the Board shall issue a revised scheduling order, if necessary.

(2) If the claimant or counterclaimant fails to cure the missed deadline or requirement within the time specified by the notice but submits a response that indicates an intent to re-engage with the proceeding pursuant to the procedures set forth in § 220.5(a)(1) of this subchapter, the Board shall consider the response and either provide

the claimant or counterclaimant with additional time to cure the missed deadline or requirement or issue a determination dismissing the claims or counterclaims.

(3) If the claimant or counterclaimant fails to cure the missed deadline or requirement within the time specified by the notice and does not otherwise respond to the notice, the Board shall issue a determination dismissing the claims or counterclaims.

(d) *Determination dismissing claims or counterclaims.* A determination dismissing the claims or counterclaims for failure to proceed in the *active proceeding* shall be with prejudice and shall include an award of attorneys' fees and costs pursuant to §232.3 of this subchapter, if appropriate. The claimant or counterclaimant may only challenge such determination to the extent permitted under 17 U.S.C. 1508(c) or the procedures set forth in paragraph (e) of this section.

(e) *Vacating a determination dismissing claims or counterclaims.* If additional proceedings have not been initiated under 17 U.S.C. 1508(c), the claimant or counterclaimant may request in writing that the determination be vacated and provide the reasons supporting the request. A request to vacate the determination must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in §220.5(b) of this subchapter; and a response to that request must be filed within 30 days of the request to vacate, shall be no more than 12 pages, and shall meet the requirements set forth in §220.5(b). The Board may vacate the determination of dismissal in the interests of justice.

(f) *Multiple missed deadlines.* A claimant or counterclaimant may cure a missed deadline according to the procedure set forth in this section at least twice without dismissal for failure to prosecute. If the claimant or counterclaimant misses a third deadline in the scheduling order without good cause, the Board may, in its discretion, proceed directly to issuing a determination dismissing the claims or counterclaims for failure to proceed under paragraph (d) of this section.

[87 FR 30088, May 17, 2022; 87 FR 36061, June 15, 2022]

PART 229—RECORDS AND PUBLICATION

Sec.
229.1 Access to records and proceedings.
229.2 Record certification.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30089, May 17, 2022, unless otherwise noted.

§229.1 Access to records and proceedings.

(a) *Official written record.* Submissions by parties to a proceeding and documents issued by the Copyright Claims Board (Board) shall constitute the official written record.

(b) *Access to record.* Any member of the public may inspect the official written record through eCCB, except any materials that have been marked confidential pursuant to §222.19 of this subchapter.

(c) *Attendance at hearing.* Attendance at a Board hearing, including virtual hearings, is limited to the parties to the proceeding, including any legal counsel or *authorized representatives,* and any witnesses, except with leave of the Board. The Board may order that a witness be excluded from a hearing except when a question is directed to the witness. A request for attendance may be made in writing. Requests for a third-party non-witness to attend a hearing and any responses thereto shall follow the procedures set forth in §220.5(a)(2) of this subchapter.

(d) *Hearing transcript.* The Board may cause a transcript of a hearing to be made by using an official reporter or any technology that is available to the Board. At the request of any party, the Board may designate an official reporter to attend and transcribe a hearing or to prepare a transcript from a recording of a hearing. Requests to designate an official reporter and any responses thereto shall follow the procedures set forth in §220.5(a)(1) of this subchapter. The requesting party or parties shall pay the reporter directly for the cost of creating an official transcript.

§229.2 Record certification.

Upon a written request to the Records Research and Certification

Section of the U.S. Copyright Office pursuant to 37 CFR 201.2(1), and payment of the appropriate fee pursuant to 37 CFR 201.3, the Board will certify the official record of a proceeding.

PART 230—REQUESTS FOR RECONSIDERATION

Sec.
230.1 General.
230.2 Request for reconsideration.
230.3 Response to request.
230.4 No new evidence.
230.5 Determination.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30089, May 17, 2022, unless otherwise noted.

§ 230.1 General.

This part prescribes rules pertaining to procedures for reconsideration of a *final determination* issued by the Copyright Claims Board (Board). A party may request reconsideration according to the procedures in this part if the party identifies a clear error of law or fact material to the outcome or a technical mistake.

§ 230.2 Request for reconsideration.

Upon receiving a *final determination* from the Board, any party may request that the Board reconsider its determination. Such a request must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter. The request must identify a clear error of law or fact that was material to the outcome or a technical mistake. The request shall not merely repeat any oral or written argument made to the Board as part of the proceeding but shall be specific as to the purported error or technical mistake that is the subject of the request. For the purposes of this section, the term *final determination* shall include an amended *final determination*.

§ 230.3 Response to request.

A party opposing a request for a reconsideration may file a response to the request within 30 days of the date of service of the request. Such response shall be no more than 12 pages and shall meet the requirements set forth in § 220.5(b) of this subchapter.

§ 230.4 No new evidence.

Evidence that was not previously submitted to the Board as part of written testimony or at a hearing or in response to a specific request for evidence from the Board shall not be submitted as part of a request for reconsideration or a response to a request, except where the party demonstrates, through clear and convincing evidence, that the evidence was not available to that party in the exercise of reasonable diligence prior to the submission of written testimony or prior to the hearing.

§ 230.5 Determination.

After the filing of response papers or after the time for a party opposing the request for reconsideration to file a response has elapsed, the Board shall consider the request and any response and shall either deny the request for reconsideration or issue an amended *final determination*. The Board will base its decision on the parties' written submissions.

[87 FR 30089, May 17, 2022; 87 FR 36061, June 15, 2022]

PART 231—REGISTER'S REVIEW

Sec.
231.1 General.
231.2 Request for Register's review.
231.3 Response to request for Register's review.
231.4 No new evidence.
231.5 Standard of review.
231.6 Determination.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30090, May 17, 2022, unless otherwise noted.

§ 231.1 General.

This part prescribes rules pertaining to procedures for review by the Register of Copyrights of a *final determination* by the Copyright Claims Board (Board). A party whose request for reconsideration has been denied under § 230.5 of this subchapter may seek review of the *final determination* by the Register of Copyrights not later than

30 days after a request for reconsideration has been denied in whole or in part.

§ 231.2 Request for Register's review.

A party may not file for review of the Board's *final determination* by the Register of Copyrights unless it has first filed, and had denied, a request for reconsideration. Where the Board has denied a request for reconsideration, the party who requested reconsideration may request review of the *final determination* by the Register of Copyrights. Such a request must be filed within 30 days of the denial of a request for reconsideration, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter. The request must include the reasons the party believes there was an abuse of discretion in denying the request for reconsideration. The request must be accompanied by the filing fee set forth in 37 CFR 201.3(g)(3).

§ 231.3 Response to request for Register's review.

A party opposing the request for review may file a response to the request for review within 30 days of the date of service of the request. Such response shall be no more than 12 pages and shall meet the requirements set forth in § 220.5(b) of this subchapter. The request must include the reasons the party believes there was no abuse of discretion in denying the request for reconsideration. No reply filings shall be permitted.

§ 231.4 No new evidence.

Evidence that was not previously submitted to the Board as part of written testimony or at a hearing or in response to a specific request for evidence from the Board shall not be submitted as part of a request for review or a response to a request for review.

§ 231.5 Standard of review.

The Register's review shall be limited to consideration of whether the Board abused its discretion in denying reconsideration of the determination.

§ 231.6 Determination.

After the filing of response papers or after the time for a party opposing the request for review to file a response has elapsed, the Register shall consider the request and any response and shall either deny the request for review or remand the proceeding to the Board for reconsideration of issues specified in the remand and for issuance of an amended *final determination*. The Register will base such a decision on the parties' written submissions.

[87 FR 30090, May 17, 2022; 87 FR 36061, June 15, 2022]

PART 232—CONDUCT OF PARTIES

Sec.
232.1 General.
232.2 Representations to the Board.
232.3 Bad-faith conduct.
232.4 Bar on initiating and participating in claims.
232.5 Legal counsel and authorized representative conduct.
232.6 Representation of business entities.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 20713, Apr. 8, 2022, unless otherwise noted.

§ 232.1 General.

(a) For purposes of this part, a *participant* includes all parties, including any legal counsel or other *authorized representatives* participating in CCB proceedings.

(b) All *participants* shall act with the utmost respect for others and shall behave ethically and truthfully in connection with all submissions and appearances before the Copyright Claims Board (Board).

[87 FR 30090, May 17, 2022; 87 FR 36061, June 15, 2022]

§ 232.2 Representations to the Board.

By submitting materials or advocating positions before the Board, a *participant* certifies that to the best of the *participant's* knowledge, information, and belief, formed after a reasonable inquiry under the circumstances:

(a) It is not being presented for any improper purpose;

(b) Any legal contentions are made in good faith based on the *participant's* reasonable understanding of existing law;

(c) Any factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary

support after a reasonable opportunity for further investigation or discovery; and

(d) Any denials of factual contentions have evidentiary support or, if specifically so identified, are reasonably based on belief or a lack of information.

[87 FR 30090, May 17, 2022; 87 FR 36061, June 15, 2022]

§ 232.3 Bad-faith conduct.

(a) *General.* The Board shall award costs and attorneys' fees as part of a determination where it is established that a *participant* engaged in *bad-faith conduct*, unless such an award would be inconsistent with the interests of justice.

(b) *Allegations of bad-faith conduct*—(1) *On the Board's initiative.* On its own, and prior to a *final determination*, the Board may order a *participant* to show cause why certain conduct does not constitute *bad-faith conduct*. Within 14 days, the *participant* accused of *bad-faith conduct* shall file a response to this order, which shall follow the procedures set forth in § 220.5(a)(2).

(2) *On a party's initiative.* A party that in good faith believes that a *participant* has engaged in *bad-faith conduct* may file a request for a conference with the Board describing the alleged bad-faith conduct and attaching any relevant exhibits. Requests for a conference concerning allegations of *bad-faith conduct* and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(c) *Establishing bad-faith conduct.* After the response of an accused *participant* has been filed under paragraph (b) of this section, or the time to file such a response has passed, the Board shall either make a determination that no *bad-faith conduct* occurred or schedule a conference concerning the allegations.

(d) *Determining the award.* A determination as to any award of attorneys' fees and costs due to *bad-faith conduct* shall be made as part of the *final determination*. In determining whether to award attorneys' fees and costs due to *bad-faith conduct*, and the amount of any such award, the Board shall consider the requests and responses submitted, any arguments on the issue, and the accused *participant's* behavior in other Board proceedings. Such an award shall be limited to an amount of not more than $5,000, unless—

(1) The adversely affected party appeared *pro se* in the proceeding, in which case the award shall be limited to costs in an amount of not more than $2,500; or

(2) Extraordinary circumstances are present, such as a demonstrated pattern or practice of *bad-faith conduct*, in which case the Board may award costs and attorneys' fees in excess of the limitations in this section.

[87 FR 30090, May 17, 2022, as amended at 87 FR 36061, June 15, 2022]

§ 232.4 Bar on initiating and participating in claims.

(a) *General.* A *participant* that has been found to have engaged in *bad-faith conduct* on more than one occasion within a 12-month period shall be subject to the penalties set forth in paragraph (d) of this section.

(b) *Allegations of multiple instances of bad-faith conduct*—(1) *On the Board's initiative.* On its own, and at any point during a proceeding, the Board may order a *participant* to show cause why certain conduct engaged in on more than one occasion within a 12-month period does not constitute a pattern of *bad-faith conduct*. Within 14 days, such *participant* shall file a response to this order, which shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(2) *On a party's initiative.* A party that in good faith believes that a *participant* has engaged in *bad-faith conduct* before the Board on more than one occasion within a 12-month period may file a request for a conference with the Board at any point after a proceeding has been initiated. Such a request shall describe the alleged instances of *bad-faith conduct*, include the CCB case numbers for any other instances of *bad-faith conduct* if known, and attach any relevant exhibits. Such a request filed by a respondent before the time to opt out of the proceeding has expired shall not operate as a waiver of that respondent's right to opt out of the proceeding. Requests for a conference concerning allegations of a pattern of *bad-faith conduct* and any responses thereto shall

follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(c) *Establishing a pattern of bad-faith conduct.* After an accused *participant's* response has been filed under paragraph (b) of this section, or the time to file such a response has passed, the Board shall either make a determination that the *participant* has not engaged in *bad-faith conduct* before the Board on more than one occasion within a 12-month period, or shall schedule a conference concerning the allegations. An award of attorneys' fees or costs against an accused *participant*, pursuant to § 232.3, within the prior 12 months shall establish an instance of *bad-faith conduct* within the requisite time period. The Board may consider other evidence of *bad-faith conduct* by the accused *participant* that did not result in an award of attorneys' fees or costs pursuant to § 232.3, including but not limited to, claims that did not proceed because they were reviewed by a Copyright Claims Attorney and found to be noncompliant or where proceedings were initiated but the respondent opted out.

(d) *Penalties.* In determining whether to bar a *participant* from initiating claims or a legal counsel or *authorized representative* from participating on a party's behalf, the Board shall consider the requests and responses submitted by the parties, any arguments on the issue, and the accused *participant's* behavior in other Board proceedings. The Board shall issue its determination in writing. If the Board determines that the accused *participant* has engaged in *bad-faith conduct* on more than one occasion within a 12-month period, such determination shall include:

(1) A provision that the accused *participant* be barred from initiating a claim, or in the case of a legal counsel or *authorized representative*, barred from participating on a party's behalf, before the Board for a period of 12 months beginning on the date on which the Board makes such a finding;

(2) In the case of a pattern of *bad-faith conduct* by a party, dismissal without prejudice of any proceeding commenced by that claimant or respondent or by the legal counsel or *authorized representative* on behalf of a party that is still pending before the Board at the time the finding is made, except that an *active proceeding* shall be dismissed only if the respondent to that proceeding provides written consent to the dismissal; and

(3) In the case of a pattern of *bad-faith conduct* by a legal counsel or *authorized representative*, a provision that the representative be barred from representing any party before the Board for a period of 12 months beginning on the date on which the Board makes such a finding. In deciding whether the legal counsel or *authorized representative* shall be barred from representing other parties in already pending proceedings, the Board may take into account the hardship to the parties represented by the sanctioned representative. If a legal counsel or *authorized representative* is barred from further representing a party in a pending claim, the Board will consider requests from that party asking the Board to amend the scheduling order or issue a stay of the pending action to allow that party to find other representation. Whether to amend the scheduling order or issue a stay shall be at the Board's discretion.

[87 FR 30090, May 17, 2022, as amended at 87 FR 36061, June 15, 2022]

§ 232.5 Legal counsel and authorized representative conduct.

(a) *Notices of appearance.* If a party elects to be represented by legal counsel or other *authorized representative* in a proceeding, such legal counsel or *authorized representative*, other than the legal counsel or *authorized representative* who filed the claim on the claimant's behalf, must file a request to link their eCCB user account to the case and to the party or parties in that case whom they represent. The legal counsel or *authorized representative* must make sure that their eCCB user account accurately contains the legal counsel's bar number in a State in which the legal counsel has been admitted to practice (if applicable), and the legal counsel or *authorized representative's* mailing address, email address, and telephone number. If a legal counsel or *authorized representative* wishes to withdraw its representation,

the legal counsel or *authorized representative* must file a Request to Withdraw Representation.

(b) *Bar admissions.* A legal counsel must be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A law student representative must qualify under regulations governing law student representation of a party set forth in part 234 of this subchapter. The legal counsel or *authorized representative* must file with the Board a written statement under penalty of perjury that the legal counsel or *authorized representative* is currently qualified and is authorized to represent the party on whose behalf the legal counsel or *authorized representative* appears.

(c) *Disbarred legal counsel.* Any legal counsel who has been disbarred by any Federal court, a court of any State, the District of Columbia, or any territory or commonwealth of the United States shall not be allowed to represent a party before the Board. If a legal counsel in any proceeding active or pending before the Board is disbarred, the legal counsel must report the disbarment to the Board and withdraw representation from any proceeding.

(d) *Duties toward the Board and the parties.* A legal counsel or *authorized representative* has a duty of candor and impartiality toward the Board, and a duty of fairness toward opposing parties. In assessing whether a legal counsel has breached its duties, the Board shall consider the rules of professional conduct of the District of Columbia and the State in which the legal counsel practices.

(e) *Penalties for violation.* Any legal counsel or *authorized representative* found to be in violation of any of the rules of conduct as set forth in this section, or who is otherwise found to be behaving unethically or inappropriately before the Board, may be barred from representing parties in proceedings before the Board for a period of twelve months.

[87 FR 30090, May 17, 2022; 87 FR 36061, June 15, 2022]

§ 232.6 Representation of business entities.

For purposes of this part:

(a) *Definition.* A *business entity* is a corporation, limited liability company, partnership, sole proprietorship, or unincorporated association.

(b) *Appearance of a business entity.* A *business entity* may appear before the Copyright Claims Board (Board) through—

(1) A member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States;

(2) A law student who meets the requirements set forth in 37 CFR 234.1;

(3) An owner, partner, officer, or member, of the *business entity;* or

(4) An authorized employee.

(c) *Certification.* Someone appearing before the Board in a proceeding to represent a *business entity* in that proceeding pursuant to paragraph (b)(3) or (4) of this section shall certify that they are an authorized agent of the *business entity* and may bind that entity in the proceeding pending before the Board. If the representative qualifies only as an authorized employee under paragraph (b)(4) of this section, then within 30 days of the authorized employee's initial appearance, the representative also must submit written authorization, signed by an owner, partner, officer, or member of the *business entity* under penalty of perjury, stating that the representative may bind that entity on matters pending before the Board. A valid certification under this subsection shall remain effective throughout the proceeding, so long as the representative continues to be authorized by the *business entity*.

(d) *Subject to standards of professional conduct.* Representatives of business entities who appear pursuant to paragraph (b)(3) or (4) of this section are equally subject to the standards of conduct as any other party representative.

PART 233—LIMITATION ON PROCEEDINGS

Sec.
233.1 General.
233.2 Limitation on proceedings.
233.3 Temporary limitations on proceedings.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30092, May 17, 2022, unless otherwise noted.

§ 233.1 General.

This part prescribes rules pertaining to the management of the Copyright Claims Board's (Board's) docket and prevention of abuse of the Board's proceedings.

§ 233.2 Limitation on proceedings.

(a) *Maximum number of proceedings.* The number of Copyright Claims Board proceedings that may be filed by a claimant and the number of proceedings that may be filed by legal counsel or law firms on behalf of claimants in any 12-month period shall be limited in accordance with this section. A proceeding shall count toward the numerical limitation as soon as it is filed, regardless of how the proceeding is resolved, whether it is found to be noncompliant under § 224.1 or unsuitable under § 224.2 of this subchapter, voluntarily dismissed, or fails to become active due to a respondent's opt-out. Neither amendments to a claim, nor counterclaims filed in response to a claim shall count as additional claims in determining whether the limit has been reached. The following limitations shall apply:

(1) A claimant, including a corporate claimant's parents, subsidiaries, and affiliates, shall file no more than 30 proceedings in any 12-month period.

(2) A sole practitioner or a legal counsel associated with a law firm shall file no more than 40 CCB proceedings on behalf of claimants in any 12-month period.

(3) A law firm shall file no more than 80 CCB proceedings on behalf of claimants in any 12-month period.

(b) *Circumvention of limit.* If a claimant files a claim in excess of the limitation set forth in paragraph (a)(1) of this section, such claim shall be dismissed without prejudice. If a sole practitioner or legal counsel associated with a law firm files a claim in excess of the limitation set forth in paragraph (a)(2) or (3) of this section, the legal counsel or law firm at issue shall be ordered to withdraw from the proceeding and the Board may stay the proceeding for 60 days, which may be extended for good cause shown, for the claimant to retain new legal counsel. It may be considered *bad-faith conduct* under § 232.3 for a party to take any action for the sole purpose of avoiding the limitation on the number of proceedings that may be filed as set forth in this section.

(c) *Law students, law clinics, and pro bono legal services.* The limitations in this section do not apply to law students or a law clinic or *pro bono* legal services organization with a connection to the participating law student's law school.

[87 FR 30092, May 17, 2022; 87 FR 36061, June 15, 2022]

§ 233.3 Temporary limitations on proceedings.

(a) *Moratorium on new claims.* If the Board has determined that the number of pending cases before it has overwhelmed the capacity of the Board, the Board may impose a temporary stay on the filing of claims. The Board shall publish an announcement of that determination on its website, stating the effective date of the stay, and the duration of the stay, not to exceed six months.

(b) *Exception to moratorium.* If a claimant's statute of limitations under 17 U.S.C. 1504(b) is about to expire during the stay issued under paragraph (a) of this section, the claimant may file a claim on or before the statutory deadline accompanied by a declaration under penalty of perjury stating that the statute of limitations will expire during the stay and setting forth facts in support of that conclusion. If the Board determines that the statute of limitations likely will expire during the stay based on the facts set forth in the declaration, the Board shall hold the claim in abeyance and conduct a compliance review following the end of the stay.

PART 234—LAW STUDENT REPRESENTATIVES

Sec.
234.1 Law student representatives.
234.2 Pro bono representation directory.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 20713, Apr. 8, 2022, unless otherwise noted.

§ 234.1 Law student representatives.

(a) *Eligibility for appearance*—(1) *State law compliance.* Any law student who is affiliated with a law school clinic or a *pro bono* legal services organization with a connection to the student's law school, is qualified under applicable laws governing representation by law students of parties in legal proceedings, and meets the other requirements of this paragraph (a)(1) may appear before the Copyright Claims Board (Board). Applicable law is the law of the jurisdiction that certifies the student to practice law in conjunction with a law school clinic or *pro bono* legal services organization with a connection to the student's law school.

(2) *Pro bono representation.* Any law student who appears before the Board must provide representation on a *pro bono* basis.

(3) *Competency.* Law student representatives must meet a standard of competency. For the purpose of appearances before the Board, competency includes successful completion of—

(i) The first year of studies at an American Bar Association-accredited law school;

(ii) Training in relevant copyright law, as determined by the supervising clinic or *pro bono* organization; and

(iii) Review of the Board's regulations found in this subchapter, and of the Copyright Alternative in Small-Claims Enforcement Act of 2020 statutory text, as codified at chapter 15 of title 17 of the United States Code.

(b) *Client consent.* The law student representative shall have the written consent of the client to appear on that client's behalf.

(c) *Attorney supervision.* A law student who represents a party in a proceeding before the Board shall be supervised by an attorney who is qualified under applicable state law governing representation by law students, as specified in paragraph (a) of this section. In supervising the law student, the attorney shall adhere to any rules regarding participant conduct.

(d) *Confirmation of eligibility.* In accordance with the standards of professional conduct set forth in paragraph (j) of this section, the attorney supervising the work of the law student representative is responsible for confirming the law student's eligibility to appear before the Board as set forth in paragraph (a) of this section.

(e) *Signature and assent.* The law student representative or supervising attorney shall electronically or physically sign each document submitted to the Board on behalf of the law student's client. If the law student representative signs, the law student must identify the name of the supervising attorney on all documents signed by the law student representative. The law student must certify that the law student sought and obtained the supervising attorney's assent to the submission.

(f) *Notice of appearance.* In any proceeding in which a law student represents a party, a notice of appearance shall be filed identifying both the law student representative and the supervising attorney, unless already identified in the party's claim or response.

(g) *Filing documents.* All filings by a law student representative shall be made with the knowledge of the supervising attorney, who shall maintain an association with the law student representative in the Board's electronic filing system (eCCB). Supervising attorneys and law students shall maintain their own accounts in eCCB. A notice of withdrawal, and a notice of appearance if applicable, shall be filed whenever the identity of a law student representative or a supervising attorney has changed.

(h) *Appearance at hearings and conferences.* A supervising attorney shall accompany the law student representative to any hearings and conferences held in the course of the proceeding, absent leave of the Board for the law student to appear without a supervising attorney present.

(i) *Responsibility for continuity of case management.* The supervising attorney shall be responsible for all aspects of case management, including appearances and withdrawals, as well as continuity of representation during law school term transitions.

(j) *Applicability of rules of professional conduct.* Law student representatives are equally subject to any rules regarding participant conduct as any other

attorney representatives. The supervising attorney has professional responsibility for the actions of the law student representative. The Board may hold supervising attorneys responsible for law student representative activity.

§ 234.2 *Pro bono* representation directory.

(a) *Publicly available directory.* The Board shall make a directory available on its website of law school clinics and of *pro bono* legal services organizations with a connection to a law school that have advised the Board that they are available, on a *pro bono* basis, to provide law student representation to clients in proceedings before the Board, and wish to be listed in the directory. Listing in the directory is not a requirement for eligible law school clinics or a *pro bono* legal services organizations to represent clients in Board proceedings.

(b) *Form for inclusion.* To be included in the public directory, the director of the law school clinic or *pro bono* legal services organization shall submit a form providing the following information for public dissemination:

(1) The name of the participating clinic or organization;

(2) The name of the law school where the clinic is based, or with which the organization is connected;

(3) The name of the director of the clinic or organization;

(4) A general contact email address and phone number;

(5) The geographic area from which the clinic or organization may accept clients;

(6) Whether the clinic or organization has handled copyright matters in the past two years;

(7) The nature of any copyright matters handled by the clinic or organization in the past two years;

(8) Whether the clinic or organization has experience in handling litigation matters;

(9) If the clinic or organization does not have litigation experience, whether it has a partnership with a litigation clinic or experience supervising law students in litigation matters;

(10) A brief statement describing the clinic or organization's interest in handling matters before the Board; and

(11) A certification that student representatives participating in Board proceedings in affiliation with the clinic or organization will meet all requirements of § 234.1(a).

(c) *Standards for inclusion.* Subject to paragraph (d) of this section, the Board will accept for inclusion in the public directory any law school clinic or *pro bono* legal services organization with a connection to a law school that certifies that its law student representatives will meet all requirements of § 234.1(a) and provides sufficient information pursuant to paragraph (b) of this section for participants in Board proceedings to evaluate whether representation is available and appropriate.

(d) *Removal from directory.* The Board may, in its discretion, remove a clinic or *pro bono* legal services organization from the directory if it determines that the clinic or organization is not suitable for representing clients before the Board, including, without limitation, if it determines that the clinic or organization has failed to properly update its information in the public directory.

(e) *Duty to update directory.* Participating clinics and *pro bono* legal services organizations, which have been listed in the directory, have a duty to maintain current information in the directory and shall confirm the currency of the information on an annual basis.

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EDITORIAL NOTE: This listing is provided for informational purposes only. It is compiled and kept current by the Library of Congress. This index is updated as of July 1, 2022.

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