

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Parts 350 and 351

[Docket No. RM 2005-1]

## Procedural Regulations for the Copyright Royalty Board

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Technical correction.

**SUMMARY:** This document corrects two errors and makes a technical correction in a final rule document published in the **Federal Register** on September 11, 2006, regarding amendments made to the procedural regulations of the Copyright Royalty Board.

**EFFECTIVE DATE:** September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gina Giuffreda, Attorney-Advisor, or Abioye E. Oyewole, CRB Program Specialist. Telephone: (202) 707-7658. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** On September 11, 2006, the Copyright Royalty Judges, on behalf of the Copyright Royalty Board, adopted amendments to the procedural regulations governing the practices and procedures of the Copyright Royalty Judges in royalty rate and distribution proceedings. 71 FR 53325 (September 11, 2006). However, in two instances, the proper amendatory instruction was inadvertently omitted. Specifically, in § 350.4, the Judges revised the heading for paragraph (e); while the revised text was printed, there was no corresponding amendatory instruction. The same error occurred with regard to the revision of the paragraph heading for § 351.10(c). This document corrects these errors.

In addition, the Judges are making a technical correction to § 351.4(b)(1) by removing the phrase “to be presented in the direct statement” so that the sentence reads less awkwardly.

## List of Subjects

## 37 CFR Part 350

Administrative practice and procedure, Copyright, Lawyers.

## 37 CFR Part 351

Administrative practice and procedure, Copyright.

■ For the reasons set forth in the preamble, 37 CFR parts 350 and 351 are corrected as follows:

## PART 350—GENERAL ADMINISTRATIVE PROVISIONS

■ 1. The authority citation for part 350 continues to read as follows:

**Authority:** 17 U.S.C. 803.

■ 2. Section 350.4 is corrected by revising the paragraph heading for paragraph (e) to read as follows:

## § 350.4 Filing and service.

\* \* \* \* \*

(e) *Subscription*— \* \* \*

\* \* \* \* \*

## PART 351—PROCEEDINGS

■ 3. The authority citation for part 351 continues to read as follows:

**Authority:** 17 U.S.C. 803, 805.

## § 351.4 [Amended].

■ 4. Section 351.4 is corrected by removing from paragraph (b)(1) the phrase “to be presented in the direct statement”.

■ 5. Section 351.10 is corrected by revising the paragraph heading for paragraph (c) to read as follows:

## § 351.10 Evidence.

\* \* \* \* \*

(c) *Exhibits*— \* \* \*

\* \* \* \* \*

Dated: October 3, 2006.

**James Scott Sledge,**

*Chief Copyright Royalty Judge.*

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 370

[Docket No. RM 2005-2]

## Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Interim final rule.

**SUMMARY:** The Copyright Royalty Judges, on behalf of the Copyright Royalty Board, are issuing interim regulations for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act.

**EFFECTIVE DATE:** October 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gina Giuffreda, Attorney-Advisor, or Abioye

Oyewole, CRB Program Specialist. Telephone (202) 707-7658. Telefax (202) 252-3423.

## SUPPLEMENTARY INFORMATION:

## I. Background

Today's Interim Regulations complete the second half of the proceeding, begun by the Librarian of Congress and the Copyright Office and now entrusted to the Copyright Royalty Board (“Board”), to establish notice and recordkeeping requirements for digital audio services utilizing the statutory licenses set forth in sections 112 and 114 of the Copyright Act. The first half of the proceeding prescribed interim regulations for the filing of notices of intention to use the section 112 and/or 114 licenses, as required by section 112(e)(7)(A) and section 114(f)(4)(B), respectively, and interim regulations for the elements of data that comprise a report of use. See 69 FR 11515 (March 1, 2004). With the issuance of today's regulations, digital audio services that have been maintaining reports of use since April 1, 2004<sup>1</sup> will now be able to deliver those and future reports to copyright owners for their use in distributing royalty fees collected under the section 112 and 114 licenses.

The matter of reports of use of sound recordings under the section 112 and 114 licenses has been contentious.<sup>2</sup> The Copyright Office first began the proceeding by issuing a Notice of Proposed Rulemaking (“NPRM”), 67 FR 5761 (February 7, 2002), and then, on May 10, 2002, held a public meeting to facilitate discussion as to the data to be included in a report of use, the frequency of the recordkeeping, and the manner and format for delivery to copyright owners. Persons representing copyright owners, users, and performers appeared and offered their opinions and criticisms of the NPRM and offered suggestions as to the amount of information necessary to distribute royalties collected under the section 112

<sup>1</sup> The Copyright Office also issued a final rule addressing reports of use under the section 112 and 114 licenses for the period October 28, 1998 through March 31, 2004. 69 FR 58261 (September 30, 2004). The Office determined that reports of use submitted by preexisting subscription services during that time period should serve as a proxy for reports from nonsubscription services, the satellite digital audio radio services, business establishment services and new types of subscription services. Consequently, the Interim Regulations issued on March 11, 2004 regarding notice and content of a report of use, and today's Interim Regulations regarding the format and delivery of a report of use, do not apply to the October 28, 1998 to March 31, 2004 period.

<sup>2</sup> In sharp contrast, the requirements for submitting a notice of intention to use the statutory licenses drew few public comments or criticisms and the Copyright Office had little trouble adopting regulations. See 69 FR at 11526.

and 114 licenses. The May 2002 meeting revealed persistent differences as to the scope of the regulations, as well as the details for creating and delivering databases of reports of use.

Subsequent to the May 10, 2002, meeting, the Copyright Office announced transitional requirements for creating reports of use because it had become clear that many services availing themselves of the statutory licenses were not keeping track of any of the sound recordings they were performing. See 67 FR 59573 (September 23, 2002). The transitional provisions were replaced by the Interim Regulations, announced almost two years later, where the Copyright Office prescribed the requirements for filing a notice of intention to use the statutory licenses, and the categories of data that comprised a report of use of a sound recording. 69 FR 11515 (March 11, 2004). The Office also made another important decision in the Interim Regulations; namely, the frequency of reporting reports of use. Although the Office announced that year-round census reporting of use of sound recordings would likely be the standard in the future, as a transitional measure, it “determined that, at this stage, it is best to require periodic reporting of sound recording performances.” 69 FR at 11526. Reports of use would be required for two periods of seven consecutive days during each calendar quarter of the year. The first reporting period began on April 1, 2004, meaning that, since that time, services using the section 112 and 114 licenses have been required to create reports of use in anticipation of regulations prescribing the format in which the reports are to be delivered to copyright owners and the details of making the deliveries.

With the first part of the regulations governing recordkeeping completed (data required and frequency of reporting), the Copyright Office turned to the task of establishing format and delivery requirements. However, on November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (“Reform Act”), Public Law 108–419, 118 Stat. 2341. The Reform Act, among other things, transferred the authority for prescribing notice and recordkeeping regulations for sections 112 and 114 from the Librarian and the Copyright Office to the Copyright Royalty Judges and the Board. The Reform Act went into effect on May 31, 2005, after the Office published a Notice of Proposed Rulemaking on April 27, 2005 proposing regulations for the format and delivery of reports of use. 70 FR 21704 (April 27, 2005). The Office received

public comments on the proposals and delivered them to the Board.

When the May 31, 2005 effective date of the Reform Act arrived, full-time appointments of the Copyright Royalty Judges had not been made. The Librarian appointed an Interim Chief Copyright Royalty Judge who, on July 27, 2005, published a Supplemental Request for Comments (“Supplemental Request”) in the **Federal Register**. 70 FR 43364 (July 27, 2005). The Supplemental Request posed a series of questions regarding format and delivery requirements since the comments submitted in response to the Office’s April 27 notice made it clear that there were deep divisions of opinion. Now that the Board has full-time Judges, and the issues involved in format and delivery are fully presented, it is time to complete the Interim Regulations.

## II. This Proceeding

As described above, the regulatory process to create recordkeeping regulations has been a lengthy one. The Librarian of Congress and the Copyright Office have invested considerable time in fashioning regulations up to this point and, absent controversies on the requirements for format and delivery of reports of use, would have completed this rulemaking. Even though jurisdiction for adopting notice and recordkeeping rules now lies solely with the Board, it is not the Board’s intention in today’s Interim Regulations to revisit the rules the Librarian and Office adopted. Rather, the Board will monitor the operation of these regulations, as well as the ones adopted today, and will request public comment in the future as to the need for amendment or improvement prior to adopting final regulations. The goal of today’s Interim Regulations is to establish format and delivery requirements so that royalty payments to copyright owners pursuant to the section 112 and 114 licenses may be made from April 1, 2004 forward based upon actual data of the sound recordings transmitted by digital audio services. The completion of the recordkeeping Interim Regulations means that all services must deliver reports of use from the period beginning April 1, 2004, and SoundExchange must process these reports of use and distribute the royalties.

Because it is the Board, and not the Copyright Office, that is promulgating today’s Interim Regulations, it is necessary to place them in Chapter III of title 37 of the Code of Federal Regulations. As noted above, authority for notice and recordkeeping regulations now rests solely with the Board. In the interest of placing all regulations related

to notice and recordkeeping under the section 112 and 114 licenses within the same part number in the CFR, the Board is also today replicating the notice and recordkeeping provisions currently located in part 270 of title 37<sup>3</sup> in part 370 of the Board’s regulations. It is anticipated that the Copyright Office will repeal in the near future part 270 of its regulations.

## III. Format and Delivery

### A. Format

Establishing the format in which a report of use is delivered to copyright owners requires consideration of competing interests. On the one hand, it is evident that digital audio services maintain data that include the content of a report of use in a wide variety of formats dependent on their resources and individual choices.<sup>4</sup> On the other hand, given the considerable volume of data to be reported, data must be delivered to copyright owners in a form that can be processed and used to make royalty payments. Sections 112(e)(4) and 114(f)(4)(A) both contain the word “reasonable” with respect to the adoption of regulations, and the commenters have expressed different points of view as to the meaning of “reasonable.” Digital audio services generally are of the view that “reasonable” means the least costly to them, while copyright owners, represented principally by SoundExchange,<sup>5</sup> opine that “reasonable” means the submission of data most compatible to their use. Mindful of these cost and efficiency concerns raised by both the services and the copyright owners, the Board identifies a workable minimum or baseline for data reporting that satisfies the required reporting responsibilities of the services without imposing unreasonable processing burdens or obstacles on the copyright owners. The Board is of the view that regulations that establish the baseline requirements for formatting and delivering a report of use—*i.e.* that satisfy the basic

<sup>3</sup> Chapter II of title 37 contains the regulations of the Copyright Office.

<sup>4</sup> The Board is also aware of the likelihood that a significant number of services have chosen not to maintain any reports of use at all, despite the March 11, 2004 Interim Regulation’s requirement that they do so beginning with the April 1, 2004 calendar quarter. See 69 FR at 11526. The Board agrees with the Copyright Office’s view that the law does not allow any services to avoid altogether reporting their use of sound recordings under the statutory licenses, *id.* at 11521, format considerations notwithstanding.

<sup>5</sup> Royalty Logic, Inc., which seeks to be an alternative distribution agent to SoundExchange, has also filed comments throughout this proceeding.

requirements necessary to deliver data that can be used to make payments collected under the statutory licenses—are reasonable as contemplated by the statute. This conclusion is supported by noting that copyright owners and services are always free to negotiate different format and delivery requirements that suit their particular needs and situations, and the Board is aware that such negotiations have taken place. *See*, Comments of the Digital Media Association at 1 (August 26, 2005).

Before addressing specifics regarding the format of a report of use, the Board expresses the following. First, the Board rejects permitting the submission of paper or hard copy reports of use. *See, e.g.*, Comments of Harvard Radio Broadcasting Co. at 3–4 (May 27, 2005). While perhaps an inexpensive way for certain services to provide reports of use, hard copies create considerable expense for copyright owners to interpret and process thereby rendering them of little value. Second, the Board rejects the argument that the format regulations should be crafted in such a way as to allow a wide array of different electronic formats. This position, advocated principally by radio broadcasters,<sup>6</sup> fails to account for the Board's stated goal in today's Interim Regulations which is to establish baseline format requirements. Further, the Board is highly skeptical that SoundExchange's data processing system is compatible with a variety of formats and radio broadcasters have failed to provide evidence—other than argument of counsel—that demonstrates any likelihood of compatibility.

Finally, the Board concludes that there is not currently available a recognized standard data processing format that can be adopted in lieu of the system proposed by SoundExchange. Radio broadcasters mention software owned by companies such as BDS and Mediabase but provide no details as to its cost, operation or availability. Joint Comments of Radio Broadcasters at 17 (August 26, 2005). Spacialaudio offers that its product, SAM Broadcaster, is capable of generating reports of use for SoundExchange. Comments of Spacialaudio.com at 2 (August 31, 2005). However, review of the product Web site reveals that SAM Broadcaster is a “professional DJ system with the ability to stream audio over the internet to listeners across the world” and is not by itself a data processing system. *See*,

<http://www.spacialaudio.com/products/sambroadcaster/>. The Board cannot adopt format requirements devoid of any nexus to a proven data processing system in the hopes that one or more will eventually become available. To do so would frustrate the already long overdue delivery of reports of use and further deny copyright owners their ability to claim royalties under the section 112 and 114 statutory licenses.

#### 1. Spreadsheets

The April 27, 2005 NPRM proposed that commercially available spreadsheets, such as Microsoft's Excel and Corel's Quattro Pro, could be used to facilitate the creation of reports of use, provided that they are converted to ASCII (American Standard Code for Information Exchange) format prior to delivery. SoundExchange was directed to provide a template on its Web site for the Microsoft and Corel products along with instructions for conversion. Technical support in creating and delivering spreadsheet reports of use was the responsibility of each service reporting data. 70 FR at 21706.

Harvard Radio Broadcasting Company (“Harvard”) and Collegiate Broadcasters, Inc. (“CBI”) argue that the use of spreadsheets is unreasonable because a computer must be purchased, along with the Microsoft or Corel software, to create spreadsheets. Comments of Harvard at 9–10; Comments of CBI at 10–11.<sup>7</sup> They also argue that the thousands of hours required to create reports of use in spreadsheet format cannot be justified, particularly given the limited resources of educational radio stations. *Id.* The Board is not persuaded by these arguments. First, the Board questions whether educational stations that exercise the option of spreadsheets must purchase a computer devoted solely to that purpose, and cannot use an existing computer or obtain a used one. Even if a new desktop computer is required, the Board finds it disingenuous to argue that purchasing a computer at an educational institution is unreasonable, particularly where it is standard practice for many colleges and universities across the United States to require that each student possess a computer as part of their enrollment. Likewise, the record does not support the premise that completing reports of use in spreadsheet format will require

thousands of hours. At present, reports of use need only be compiled for two seven consecutive day periods per calendar quarter, not year round as submitted in Harvard's estimates.

The Board is also not persuaded that conversion of spreadsheets into ASCII format presents an unreasonable burden upon digital audio services. SoundExchange, Inc. and Royalty Logic, Inc. demonstrate that the conversion process using the Microsoft or Corel software is simple and straightforward. *See*, Comments of SoundExchange, Inc. at 21 (August 26, 2005); Comments of Royalty Logic, Inc. at 2 (August 31, 2005). SoundExchange has also developed with Microsoft a macro that facilitates the spreadsheet conversion<sup>8</sup> and is in the process of developing a similar macro with Corel. SoundExchange is directed to complete that negotiation with Corel and post the result on its Web site. The Board remains of the view that each service using a spreadsheet to prepare a report of use is responsible for any technical expertise necessary to complete the task.

#### 2. Files With Headers

Three issues drew considerable public comment with respect to the proposal for permitting data files to be submitted with headers. Broadcasters objected to the first six lines of a file with headers arguing that the information requested was already contained in either the report of use itself or the notice of intention to obtain the section 112 and 114 licenses, and therefore would unnecessarily increase their labor costs. Joint Comments of Radio Broadcasters at 27–28 (August 26, 2005); Comments of Collegiate Broadcasters, Inc. at 16 (August 31, 2005). There was also considerable debate over the order of the date identification appearing in a file header, which also appears in a file name. Services uniformly favored the standard year, month, day (YYYYMMDD), while SoundExchange favored day, month, year (DDMMYYYY) principally on the ground that its current software recognizes only this convention. Comments of SoundExchange, Inc. at 24–25 (August 26, 2005). Finally, services argued that they should have their choice in identifying the text indicator and field delimiter used in a data file accompanying the header. *See, e.g.*, Comments of Harvard Radio Broadcasting Company at 19 (August 26, 2005); Comments of the National

<sup>6</sup> Comments of the National Religious Broadcasters Music License Committee and Salem Communications Corp. (May 27, 2005); Joint Comments of Radio Broadcasters (August 26, 2005).

<sup>7</sup> Radio broadcasters submit that it is unlikely that they will avail themselves of the spreadsheet option and “likely will seek an automated solution that will enable them to generate electronic ASCII files directly from their music scheduling programs.” Joint Comments of Radio Broadcasters at 14 (August 26, 2005).

<sup>8</sup> Harvard admits that it is “very impressed” with the Microsoft spreadsheet's ability to convert to ASCII, and estimates no more than one hour per conversion. Comments of Harvard Radio Broadcasting Company at 11 (August 26, 2005).

Religious Broadcasters Music Licensing Committee and Salem Communications Corp. at 1–2 (May 27, 2005).

The Board is not persuaded that the redundancy of information sought in a file with headers is unduly burdensome. Services are not required to provide their data files with headers, and thereby may avoid any perceived burdens associated with supplying the data required in the first six lines. Likewise, services objecting to the required order of data to be provided in a file with headers may elect to provide their data without headers.

The Board is persuaded that the date convention YYYYMMDD is the most widely adopted and therefore is adopting it for files with headers as well as file names. The Board is also allowing services to choose the text indicator and field delimiter that they are using in a file with headers, but is clarifying that the symbols chosen must be unique and never found in the report's data content. It is the responsibility of the services to comply with this requirement.

### 3. Files Without Headers

Services challenge two provisions of the April 27, 2005 NPRM's proposals for files without headers. First, certain services submit that text fields should accommodate both upper and lower case characters. Comments of Harvard Radio Broadcasting Company at 22 (August 26, 2005); Joint Comments of Radio Broadcasters at 33 (August 26, 2005). Second, the services generally favor the use of abbreviations within data fields. Harvard, recognizing that abbreviations within the music industry are not standard and therefore might present data interpretation difficulties, proposes that SoundExchange be required to periodically publish its database so that services can enter the database and use the identifiers that SoundExchange assigns to specific bits of data (such as song title, artist name, etc.). Comments of Harvard Radio Broadcasting Company at 24–28 (August 26, 2005). 3WK L.L.C. opposes accessing the SoundExchange database believing the practice would be financially and physically prohibitive to a small company like itself. Comments of 3WK L.L.C. at 3 (August 31, 2005).

The Board accepts the first proposal but not the second. Accepting data in both upper and lower case characters is not an unusual convention and SoundExchange can adjust its software to accommodate both. The Board is not allowing, however, the use of abbreviations in data fields. There are no accepted standards for abbreviating artists' names, song titles, album titles,

etc., thereby requiring data processors to analyze each data component containing an abbreviation in an effort to correctly identify it. This is likely to present considerable delays in data processing, as well as raise costs. Reply comments of SoundExchange, Inc. at 24 (September 16, 2005). Radio Broadcasters' argument that SoundExchange's software can solve efficiency and cost problems through "fuzzy matching" is neither convincing nor supported by evidence. The Board also does not believe that Harvard's suggestion of a publicly provided database will, at least at this time, solve the problem. Services already complain that entering data for reports of use is too costly. Requiring them to access a database of millions of sound recordings in an effort to secure identifiers for the songs they have performed will likely add considerably to their costs. See Comments of 3WK L.L.C. at 3 (August 31, 2005). As time passes, and reports of use continue to be provided, it is possible that a metadata database may provide a solution to the matter of abbreviations, as well as other issues presented in this proceeding. The Board will continue to monitor the matter as part of its continuing oversight of the regulations governing reports of use.

### B. Delivery

The proposed rules set forth in the April 27, 2005 NPRM prescribe that data contained in a report of use maybe delivered by File Transfer Protocol (FTP), e-mail, CD-ROM, or floppy diskette to a single address (SoundExchange). Services urge the Board to require that SoundExchange establish a Web site for receipt of data, and Royalty Logic, Inc. ("RLI") requests that it receive all reports of use in addition to SoundExchange.

SoundExchange vigorously objects to the expense that it would incur to create and maintain a Web site, citing testimony of Shane Sleighter whom SoundExchange offers as an expert in business software development. Mr. Sleighter states that creation of a Web site that will permit users to complete their reports of use via the site could cost anywhere between \$100,000 to \$950,000, depending upon the functions that it would perform. Comments of SoundExchange, Inc. at Tab A–7. Mr. Sleighter estimates that a Web site designed solely to receive existing reports of use would cost approximately \$50,000, again depending upon functionality. *Id.* at Tab A–8. The services urge the mandatory creation of a SoundExchange Web site not because they are dissatisfied with the other delivery methods offered in the

proposed rules, nor that they are altogether inadequate, but rather because they view a SoundExchange Web site as an opportunity to shift the burden of organizing their data files. Joint Comments of Radio Broadcasters at 21 (August 26, 2005); Comments of Collegiate Broadcasters, Inc. at 13 (August 31, 2005); Comments of Harvard Radio Broadcasting Company at 15 (August 26, 2005); Comments of Radio, Inc. at 5–7 (August 29, 2005). In keeping with the Board's stated goal of adopting baseline requirements in these rules, the Board is disinclined to add a fifth delivery method at this time. The Board will continue to monitor the delivery process and will explore the possibility and the need for a SoundExchange Web site prior to adopting final regulations.

With respect to the matter of delivery of reports of use to RLI, arguments are offered pro and con as to whether RLI has standing to receive reports of use and broadcasters express concerns about the costs associated with delivering reports of use to multiple entities. The Board does not consider today's rulemaking the proper forum to determine RLI's or other copyright owners groups' standing to receive reports of use. As of today's publication of Interim Regulations, only SoundExchange is a recognized receiving agent for royalties generated under the section 112 and 114 licenses and, therefore, these regulations provide for delivery of reports of use to SoundExchange. However, during the period that these Interim Regulations are in effect and absent any future adjustment to these regulations by the Board, if other parties receive the same designation as "collectives"<sup>9</sup>, then SoundExchange is required to forward copies of reports of use to all other such "collectives".

### List of Subjects in 37 CFR Part 370

Copyright, Sound recordings.

### Interim Regulation

■ For the reasons set forth in the preamble, Chapter III of Title 37 of the Code of Federal Regulations is amended by adding new Subchapter D to read as follows:

<sup>9</sup>RLI is currently seeking such designation in the Board's section 112 and 114 rate adjustment proceeding for subscription, nonsubscription and new services. Docket No. 2005–1 CRB DTRA.

**Subchapter D—Notice and Recordkeeping Requirements for Statutory Licenses**

**PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES**

Sec.

- 370.1 Notice of use of sound recordings under statutory license.
- 370.2 Reports of use of sound recordings under statutory license for preexisting subscription services.
- 370.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio services, new subscription services and business establishment services.
- 370.4 Reports of use of sound recordings under statutory license prior to April 1, 2004.
- 370.5 Designated collection and distribution organizations for reports of use of sound recordings under statutory license.

**Authority:** 17 U.S.C. 112(e)(4), 114(f)(4)(A).

**§ 370.1 Notice of use of sound recordings under statutory license.**

(a) *General.* This section prescribes rules under which copyright owners shall receive notice of use of their sound recordings when used under either section 112(e) or 114(d)(2) of title 17, United States Code, or both.

(b) *Definitions.* (1) A *Notice of Use of Sound Recordings under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 112(e) or 114(d)(2) of title 17, United States Code, or both, and is required under this section to be filed by a Service in the Copyright Office.

(2) A *Service* is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. For purposes of this section, the definition of a Service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2). A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service, business establishment service or a combination of those:

(i) A *preexisting subscription service* is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, and was in existence and making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(ii) A *preexisting satellite digital audio radio service* is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(iii) A *nonsubscription transmission service* is a service that makes noninteractive nonsubscription digital audio transmission that are not exempt under section 114(d)(1) of title 17 of the United States Code and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(iv) A *new subscription service* is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(v) A *business establishment service* is a service that makes ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code and is exempt under section 114(d)(1)(C)(iv) of title 17 of the United States Code.

(c) *Forms and content.* A Notice of Use of Sound Recordings Under Statutory License shall be prepared on a form that may be obtained from the Copyright Office Web site or from the Licensing Division, and shall include the following information:

(1) The full legal name of the Service that is either commencing digital transmissions of sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both.

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) The telephone number and facsimile number of the Service.

(4) Information on how to gain access to the online Web site or homepage of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.

(5) Identification of each license under which the Service intends to operate, including identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service or business establishment service.

(6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral phonorecords of the sound recordings.

(7) Identification of any amendments required by paragraph (f) of this section.

(d) *Signature.* The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting the sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice and by the date of the signature.

(e) *Filing notices; fees.* The original and three copies shall be filed with the Licensing Division of the Copyright Office and shall be accompanied by the filing fee set forth in § 201.3(c) of this title. Notices shall be placed in the public records of the Licensing Division. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557–6400.

(1) A Service that, prior to April 12, 2004, has already commenced making digital transmissions of sound recordings pursuant to section 114(d)(2)

of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code, or both, and that has already filed an Initial Notice of Digital Transmission of Sound Recordings Under Statutory License, and that intends to continue to make digital transmissions or ephemeral phonorecords following July 1, 2004, shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office no later than July 1, 2004.

(2) A Service that, on or after July 1, 2004, commences making digital transmissions and ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first digital transmission of the sound recording.

(3) A Service that, on or after July 1, 2004, commences making only ephemeral phonorecords of sound recordings, shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of a sound recording under the statutory license.

(f) *Amendment.* A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file has changed, and shall indicate in the space provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

### **§ 370.2 Reports of use of sound recordings under statutory license for preexisting subscription services.**

(a) *General.* This section prescribes the rules for the maintenance and delivery of reports of use for sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by preexisting subscription services.

(b) *Definitions.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f), prior to the effective date of the Copyright Royalty and Distribution Reform Act of 2004, or by determination

of the Copyright Royalty Judges under section 114(f)(1)(B) or section 114(f)(1)(C)(ii).

(2) A *Report of Use of Sound Recordings Under Statutory License* is the report of use required under this section to be provided by a Service transmitting sound recordings and making ephemeral phonorecords therewith under statutory licenses.

(3) A *Service* is a preexisting subscription service, as defined in 17 U.S.C. 114(j)(11).

(c) *Service.* Reports of Use shall be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f), prior to the effective date of the Copyright Royalty and Distribution Reform Act of 2004, or by determination of the Copyright Royalty Judges under section 114(f)(1)(B) or section 114(f)(1)(C)(ii). Reports of Use shall be served, by certified or registered mail, or by other means if agreed upon by the respective preexisting subscription service and Collective, on or before the forty-fifth day after the close of each month.

(d) *Posting.* In the event that no Collective is designated under the statutory license, or if all designated Collectives have terminated collection and distribution operations, a preexisting subscription service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Preexisting subscription services shall post their Reports of Use online on or before the forty-fifth day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Preexisting subscription services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Preexisting subscription services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

(2) A “click-wrap” agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the preexisting subscription service providing the Report of Use.

(e) *Content.* A “Report of Use of Sound Recordings under Statutory License” shall be identified as such by prominent caption or heading, and shall include a preexisting subscription service’s “Intended Playlists” for each channel and each day of the reported month. The “Intended Playlists” shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

(1) The name of the preexisting subscription service or entity;

(2) The channel;

(3) The sound recording title;

(4) The featured recording artist, group, or orchestra;

(5) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the preexisting subscription service for purchase of the sound recording);

(6) The marketing label of the commercially available album or other product on which the sound recording is found;

(7) The catalog number;

(8) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(9) Where available, the copyright owner information provided in the copyright notice on the retail album or other product (e.g., following the symbol (P), that is the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual sound recording;

(10) The date of transmission; and

(11) The time of transmission.

(f) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the preexisting subscription service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the preexisting subscription service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(g) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

(1) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

(2) Carats should surround strings;

(3) No carats should surround dates and numbers;

(4) Dates should be indicated by: MM/DD/YYYY;

(5) Times should be based on a 24-hour clock: HH:MM:SS;

(6) A carriage return should be at the end of each line; and

(7) All data for one record should be on a single line.

(h) *Confidentiality*. Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the preexisting subscription service providing the Report of Use.

(i) *Documentation*. All compulsory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the preexisting subscription service shall serve upon all designated Collectives and retain for a period of three years from the date of transmission reports of use indicating which sound recordings were performed and the number of times each recording was performed, but is not required to produce full Reports of Use or Intended Playlists for those periods.

**§ 370.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.**

(a) *General*. This section prescribes rules for the maintenance and delivery of reports of use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services.

(b) *Definitions*. (1) *Aggregate Tuning Hours* are the total hours of programming that a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service has transmitted during the reporting period identified in paragraph (c)(3) of this section to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription service, preexisting satellite digital audio radio service, new

subscription service or business establishment service transmissions, less the actual running time of any sound recordings for which the service has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. For example, if a nonsubscription transmission service transmitted one hour of programming to 10 simultaneous listeners, the nonsubscription transmission service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the nonsubscription transmission service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a nonsubscription transmission service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the nonsubscription transmission service's Aggregate Tuning Hours would equal 10.

(2) An *AM/FM Webcast* is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

(3) A *Collective* is a collection and distribution organization that is designated under one or both of the statutory licenses by decision of a Copyright Arbitration Royalty Panel under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section 114(f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii), or by an order of the Librarian of Congress pursuant to 17 U.S.C. 802(f), prior to the effective date of the Copyright Royalty and Distribution Reform Act of 2004, or by determination of the Copyright Royalty Judges under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section 114(f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii).

(4) A *new subscription service* is defined in § 370.1(b)(2)(iv).

(5) A *nonsubscription transmission service* is defined in § 370.1(b)(2)(iii).

(6) A *preexisting satellite digital audio radio service* is defined in § 370.1(b)(2)(ii).

(7) A *business establishment service* is defined in § 370.1(b)(2)(v).

(8) A *performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (e.g., the delivery of any

portion of a single track from a compact disc to one Listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(9) *Play frequency* is the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the two-week reporting period, then the play frequency is one. If the sound recording is transmitted 10 times during the two-week reporting period, then the play frequency is 10.

(10) A *Report of Use* is a report required under this section to be provided by a nonsubscription transmission service and new subscription service that is transmitting sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code, or both.

(c) *Report of Use*— (1) *Separate reports not required*. A nonsubscription transmission service, preexisting satellite digital audio radio service or a new subscription service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code and makes ephemeral phonorecords of sound recordings

pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code need not maintain a separate Report of Use for each statutory license during the relevant reporting periods.

(2) *Content.* For a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code, or the statutory license set forth in section 112(e) of title 17 of the United States Code, or both, each Report of Use shall contain the following information, in the following order, for each sound recording transmitted during the reporting periods identified in paragraph (c)(3) of this section:

(i) The name of the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service making the transmissions, including the name of the entity filing the Report of Use, if different;

(ii) The category transmission code for the category of transmission operated by the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service:

(A) For eligible nonsubscription transmissions other than broadcast simulcasts and transmissions of non-music programming;

(B) For eligible nonsubscription transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming;

(C) For eligible nonsubscription transmissions of non-music programming reasonably classified as news, talk, sports or business programming;

(D) For eligible nonsubscription transmissions by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by §§ 261.3(a)(2)(i) and (ii) of this title;

(E) For eligible nonsubscription transmissions by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by § 261.3(a)(2)(iii) of this title;

(F) For eligible nonsubscription transmissions by a small webcaster operating under an agreement published in the **Federal Register** pursuant to the Small Webcaster Settlement Act;

(G) For eligible nonsubscription transmissions by a noncommercial

broadcaster operating under an agreement published in the **Federal Register** pursuant to the Small Webcaster Settlement Act;

(H) For transmissions other than broadcast simulcasts and transmissions of non-music programming made by an eligible new subscription service;

(I) For transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming made by an eligible new subscription service;

(J) For transmissions of non-music programming reasonably classified as news, talk, sports or business programming made by an eligible new subscription service; and

(K) For eligible transmissions by a business establishment service making ephemeral recordings;

(iii) The featured artist;

(iv) The sound recording title;

(v) The International Standard

Recording Code (ISRC) or, alternatively to the ISRC, the

(A) Album title; and

(B) Marketing label;

(vi) The actual total performances of the sound recording during the reporting period or, alternatively, the

(A) Aggregate Tuning Hours;

(B) Channel or program name; and

(C) Play frequency.

(3) *Reporting period.* A Report of Use shall be prepared for a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year. The two weeks need not be consecutive, but both weeks must be completely within the calendar quarter.

(4) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Report, and by the date of the signature.

(5) *Confidentiality.* Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, without consent of the service providing the Report of Use.

(6) *Documentation.* A Service shall, for a period of at least three years from the date of service or posting of a Report of Use, keep and retain a copy of the Report of Use.

(d) *Format and delivery*—(1) *Electronic format only.* Reports of use must be maintained and delivered in

electronic format only, as prescribed in paragraphs (d)(2) through (8) of this section. A hard copy report of use is not permissible.

(2) *ASCII text file delivery; facilitation by provision of spreadsheet templates.*

All report of use data files must be delivered in ASCII format. However, to facilitate such delivery, SoundExchange shall post and maintain on its Internet Web site a template for creating a report of use using Microsoft's Excel spreadsheet and Corel's Quattro Pro spreadsheet and instruction on how to convert such spreadsheets to ASCII text files that conform to the format specifications set forth below. Further, technical support and cost associated with the use of spreadsheets is the responsibility of the service submitting the report of use.

(3) *Delivery mechanism.* The data contained in a report of use may be delivered by File Transfer Protocol (FTP), e-mail, CD-ROM, or floppy diskette according to the following specifications:

(i) A service delivering a report of use via FTP must obtain a username, password and delivery instructions from SoundExchange. SoundExchange shall, by no later than December 5, 2006, post on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.

(ii) A service delivering a report of use via e-mail shall append the report as an attachment to the e-mail. The main body of the e-mail shall identify:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iii) A service delivering a report of use via CD-ROM must compress the reporting data to fit onto a single CD-ROM per reporting period. Each CD-ROM shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iv) A service delivering a report of use via floppy diskette must compress the reporting data to fit onto a single floppy diskette per reporting period. Each floppy diskette must measure 3.5 inches in diameter and be formatted using MS/DOS. Each floppy diskette shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, the counting of the rows should begin with row 1; and

(E) The name of the file attached.

(4) *Delivery address.* Reports of use shall be delivered to SoundExchange at the following address: SoundExchange, Inc., 1330 Connecticut Avenue, NW., #330, Washington, DC 20036; (Phone) (202) 828-0120; (Facsimile) (202) 833-2141; (E-mail) [info@soundexchange.com](mailto:info@soundexchange.com).

SoundExchange shall forward electronic copies of these reports of use to all other collectives defined in this section.

(5) *File naming.* Each data file contained in a report of use must be given a name by the service followed by the start and end date of the reporting period. The start and end date must be separated by a dash and in the format of day, month and year (YYYYMMDD). Each file name must end with the file type extension of ".txt". (Example: *AcmeMusicCo20050101-20050331.txt*).

(6) *File type and compression.* (i) All data files must be in ASCII format.

(ii) A report of use must be compressed in one of the following zipped formats:

(A) .zip—generated using utilities such as WinZip and/or UNIX zip command;

(B) .Z—generated using UNIX compress command; or

(C) .gz—generated using UNIX gzip command.

Zipped files shall be named in the same fashion as described in paragraph (d)(5) of this section, except that such zipped files shall use the applicable file extension compression name described in this paragraph (d)(6).

(7) *Files with headers.* (i) If a service elects to submit files with headers, the following elements, in order, must occupy the first 14 rows of a report of use:

(A) Name of service;

(B) Name of contact person;

(C) Street address of the service;

(D) City, state and zip code of the service;

(E) Telephone number of the contact person;

(F) E-mail address of the contact person;

(G) Start of the reporting period (YYYYMMDD);

(H) End of the reporting period (YYYYMMDD);

(I) Report generation date (YYYYMMDD);

(J) Number of rows in data file, beginning with 15th row;

(K) Text indicator character;

(L) Field delimiter character;

(M) Blank line; and

(N) Report headers (Featured Artist, Sound Recording Title, etc.).

(ii) Each of the rows described in paragraphs (d)(7)(i)(A) through (F) of this section must not exceed 255 alphanumeric characters. Each of the rows described in paragraphs (d)(7)(i)(G) through (I) of this section should not exceed eight alphanumeric characters.

(iii) Data text fields, as required by paragraph (c) of this section, begin on row 15 of a report of use with headers. A carriage return must be at the end of each row thereafter. Abbreviations within data fields are not permitted.

(iv) The text indicator character must be unique and must never be found in the report's data content.

(v) The field delimiter character must be unique and must never be found in the report's data content. Delimiters must be used even when certain elements are not being reported; in such case, the service must denote the blank data field with a delimiter in the order in which it would have appeared.

(8) *Files without headers.* If a service elects to submit files without headers, the following format requirements must be met:

(i) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;

(ii) Carats (^) should surround strings;

(iii) No carats (^) should surround dates and numbers;

(iv) A carriage return must be at the end of each line;

(v) All data for one record must be on a single line; and

(vi) Abbreviations within data fields are not permitted.

#### § 370.4 Reports of use of sound recordings under statutory license prior to April 1, 2004.

(a) *General.* This section prescribes the rules which govern reports of use of sound recordings by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(b) *Reports of use.* Reports of use filed by preexisting subscription services for transmissions made under 17 U.S.C. 114(f) pursuant to § 370.2 for use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period October 28, 1998, through March 31, 2004, shall serve as the reports of use for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services for their use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, for the period from October 28, 1998, through March 31, 2004.

(c) *Royalty Logic Inc.* If, in accordance with § 261.4(c) of this title, any Copyright Owners or Performers have provided timely notice to SoundExchange of an election to receive royalties from Royalty Logic, Inc. (RLI) as a Designated Agent for the period October 28, 1998, through December 31, 2002, or any portion thereof, SoundExchange shall provide to RLI copies of the Reports of Use described in paragraph (b) of this section for that period or the applicable portion thereof.

#### § 370.5 Designated collection and distribution organizations for reports of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which reports of use shall be collected and distributed under section 114(f) of title 17 of the United States Code, and under which reports of such use shall be kept and made available.

(b) *Definitions.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license by decision of a Copyright Arbitration Royalty Panel under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian of Congress pursuant to 17 U.S.C. 802(f), prior to the effective date of the Copyright Royalty and Distribution Reform Act of 2004, or by determination of the Copyright

Royalty Judges under section 114(f)(1)(B) or section 114(f)(1)(C)(ii).

(2) A *Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Notice of Designation as Collective under Statutory License.* A Collective shall file with the Licensing Division of the Copyright Office and post and make available online a "Notice of Designation as Collective under Statutory License," which shall be identified as such by prominent caption or heading, and shall contain the following information:

(1) The Collective name, address, telephone number and facsimile number;

(2) A statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and

(3) Information on how to gain access to the online Web site or home page of the Collective, where information may be posted under this part concerning the use of sound recordings under statutory license. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557-6400.

(d) *Annual Report.* The Collective will post and make available online, for the duration of one year, an Annual Report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.

(e) *Inspection of Reports of Use by copyright owners.* The Collective shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner, and the copyright owner's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. The Collective shall render its best efforts to locate copyright owners in order to make available reports of use, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.

(f) *Confidentiality.* Copyright owners, their agents, and Collectives shall not disseminate information in the Reports

of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(g) *Termination and dissolution.* If a Collective terminates its collection and distribution operations prior to the close of its term of designation, the Collective shall notify the Copyright Office, and all Services transmitting sound recordings under statutory license, by certified or registered mail. The dissolving Collective shall provide each such Service with information identifying the copyright owners it has served.

Dated: October 3, 2006.

**James Scott Sledge,**

*Chief Copyright Royalty Judge.*

[FR Doc. E6-16614 Filed 10-5-06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281-0369-02; I.D. 091306A]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 12 noon, local time, October 6, 2006, through June 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, 727-824-5305, fax: 727-824-5308, e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal

Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached by October 6, 2006.

Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12:00 noon, local time, October 6, 2006, through June 30, 2007, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed