authority of the copyright owner, for ultimate sale to consumers.

(12) The “transfer price” of a digital audio recording device or a digital audio recording medium—

(A) is, subject to subparagraph (B)—

(1) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

(ii) in the case of a domestic product, the manufacturer’s transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and

(B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.

(13) A “writer” is the composer or lyricist of a particular musical work.


Editorial Notes

REFERENCES IN TEXT

Section 482 of the Internal Revenue Code of 1986, referred to in par. (12)(B), is classified to section 482 of Title 26, Internal Revenue Code.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE


SUBCHAPTER B—COPYING CONTROLS

§ 1002. Incorporation of copying controls

(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to—

(1) the Serial Copy Management System;

(2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system’s method of serial copying regulation and devices using the Serial Copy Management System; or

(3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

(b) DEVELOPMENT OF VERIFICATION PROCEDURE.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

(c) PROHIBITION ON CIRCUMVENTION OF THE SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

(d) ENCODING OF INFORMATION ON DIGITAL MUSICAL RECORDINGS.—

(1) PROHIBITION ON ENCODING INACCURATE INFORMATION.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.

(2) ENCODING OF COPYRIGHT STATUS NOT REQUIRED.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.

(e) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.


SUBCHAPTER C—ROYALTY PAYMENTS

§ 1003. Obligation to make royalty payments

(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.

(b) FILING OF NOTICE.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.

(c) FILING OF QUARTERLY AND ANNUAL STATEMENTS OF ACCOUNT.—

(1) GENERALLY.—Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such distribution as the Register shall prescribe by regulation.

(2) CERTIFICATION, VERIFICATION, AND CONFIDENTIALITY.—Each such statement shall be
§ 1004. Royalty payments

(a) Digital audio recording devices.—

(1) Amount of payment.—The royalty payment due under section 1003 for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

(2) Calculation for devices distributed with other devices.—With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

(A) 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.

(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

(3) Limits on royalties.—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Judges to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Copyright Royalty Judges shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

(b) Digital audio recording media.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

References in Text

The effective date of this chapter, referred to in subsec. (a)(3), is Oct. 28, 1992. See Effective Date note set out under section 1001 of this title.

Amendments


Statutory Notes and Related Subsidiaries

Effective Date of 2004 Amendment


§ 1005. Deposit of royalty payments and deduction of expenses

The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register’s discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year,