

**37 C.F.R. § 201.18**

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**Effective: [See Text Amendments]**

Code of Federal Regulations Currentness  
 Title 37. Patents, Trademarks, and Copyrights  
 Chapter II. Copyright Office, Library of Congress

▣ Subchapter A. Copyright Office and Procedures (Refs & Annos)

▣ Part 201. General Provisions (Refs & Annos)

**→ § 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, and required by that section to be served on a copyright owner or, in certain cases, to be filed in the Copyright Office, before or within thirty days after making, and before distributing any phonorecords of the work, in order to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A 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. A Notice of Intention may designate any number of nondramatic musical works, provided that 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 and that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary. For purposes of this section, a Notice which lists multiple works shall be considered a composite filing of multiple Notices and fees shall be paid accordingly if filed in the Copyright Office under paragraph (f) of this section (i.e., a separate fee, in the amount set forth in § 201.3(e)(1), shall be paid for each work listed in the Notice).

(3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one

of the co-owners.

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

(5) 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.

(6) 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)(4) 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

## 37 C.F.R. § 201.18

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 § 201.19(a)(4).

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

(d) Content.

(1) A Notice of Intention shall be clearly and prominently designated, at the head of the notice, as a "Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

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

(ii) The telephone number, the full address, including a specific number and street name or rural route of the place of business, and an e-mail address, if available, of the person or entity intending to obtain the compulsory license, and if a business organization intends to obtain the compulsory license, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location.

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

(iv) The fiscal year of the person or entity intending to obtain the compulsory license. If that fiscal year is a calendar year, the Notice shall state that this is the case;

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

(A) The title of the nondramatic musical work;

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

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

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

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

(F) The name of the principal recording artist or group actually engaged or expected to be engaged in rendering the performances fixed on phonorecords already made (if any) or expected to be made under the compulsory license;

(G) The catalog number or numbers, and label name or names, used or expected to be used on phonorecords already made (if any) or expected to be made under the compulsory license; and

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

(vi) In the case where the Notice will be filed with the Copyright Office pursuant to paragraph (f)(3) of this section, the Notice shall include an affirmative statement that with respect to the nondramatic musical work named in the Notice of Intention, the registration records or other

## 37 C.F.R. § 201.18

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.

(f) Filing and service.

(1) If the registration records or other public records of the Copyright Office identify the copyright owner of the nondramatic musical works named in the Notice of Intention and include an address for such owner, the Notice may be served on such owner by mail sent to, or by reputable courier service at, the last address for such owner shown by the records of the Office. It shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

(2) If the Notice is sent by mail or delivered by reputable courier service to the last address for the copyright owner shown by the records of the Copyright Office and the Notice is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office. Notices of Intention submitted for filing under this paragraph (f)(2) shall be submitted to the Licensing Division of the Copyright Office, shall be accompanied by a brief statement that the Notice was sent to the last address for the copyright owner shown by the records of the Copyright Office but was returned, and may be accompanied by appropriate evidence that it was mailed to, or that delivery by reputable courier service was attempted at, that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, or the date delivery by courier service was attempted, if shown by the evidence mentioned above, as the date of filing. An acknowledgment of receipt and filing will be provided to the sender.

(3) If, with respect to the nondramatic musical works named in the Notice of Intention, the registration records or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice may be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in § 201.3(e). A separate fee shall be assessed for each title listed in the Notice. Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when the Notice and fee are both received in the Copyright Office. An acknowledgment of receipt and filing will be provided to the sender.

## 37 C.F.R. § 201.18

(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 (a)(4) of this section, the Notice of Intention may be served on the copyright owner or the agent of the copyright owner by sending the Notice by mail or delivering it by reputable courier service to the address of the copyright owner or agent of the copyright owner. For purposes of section 115(b)(1) of title 17 of the United States Code, the Notice will not be considered properly served if the Notice is not sent to the copyright owner or the agent of the copyright owner as described in paragraph (a)(4) 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) Harmless errors. Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of section 115(b)(1) of title 17 of the United States Code, shall not render the Notice invalid.

[45 FR 79045, Nov. 28, 1980; 56 FR 59885, Nov. 26, 1991; 63 FR 30635, June 5, 1998; 64 FR 29521, June 1, 1999; 64 FR 36574, July 7, 1999; 64 FR 41288, July 30, 1999; 69 FR 34582, June 22, 2004]

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37 C. F. R. § 201.18, 37 CFR § 201.18

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END OF DOCUMENT

**37 C.F.R. § 201.19**

37 C.F.R. § 201.19

**Effective: [See Text Amendments]**Code of Federal Regulations Currentness

Title 37. Patents, Trademarks, and Copyrights

Chapter II. Copyright Office, Library of Congress

▣ Subchapter A. Copyright Office and Procedures (Refs & Annos)▣ Part 201. General Provisions (Refs & Annos)**→ § 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.**

## (a) Definitions.

(1) A "Monthly Statement of Account" is a statement accompanying monthly royalty payments identified in section 115(c)(5) of Title 17 of the United States Code, and required by that section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) An "Annual Statement of Account" is a statement identified in section 115(c)(5) of Title 17 of the United States Code, and required by that section to be filed for every compulsory license to make and distribute phonorecords of nondramatic musical works.

(3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(4) For the purposes of this section, the service of a Statement of Account on a copyright owner under paragraph (e)(7) or (f)(7) of this section 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 State-

ment 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.

(5) For the purposes of this section, a "compulsory licensee" is a person or entity exercising the compulsory license to make and distribute phonorecords of nondramatic musical works as provided under section 115(c)(5) of Title 17 of the United States Code.

(6) 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, with the following clarifications:

(i) A digital phonorecord delivery shall be treated as a phonorecord made and distributed on the date the phonorecord is digitally transmitted; and

(ii) A digital phonorecord delivery shall be treated as having been voluntarily distributed and relinquished from possession, and a compulsory licensee shall be treated as having permanently parted with possession of a digital phonorecord delivery, on the date that the phonorecord is digitally transmitted.

(7) Except as provided in paragraph (a)(6) of this section, a phonorecord is considered voluntarily distributed if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord. For this purpose, and subject to the provisions of paragraph (d) of this section, a compulsory licensee shall be considered to have "permanently parted with possession" of a phonorecord made under the license:

(i) In the case of phonorecords relinquished from possession for purposes other than sale, at the time at which the compulsory licensee actually first parts with possession;

(ii) In the case of phonorecords relinquished from possession for purposes of sale without a

privilege of returning unsold phonorecords for credit or exchange, at the time at which the compulsory licensee actually first parts with possession;

(iii) In the case of phonorecords relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange:

(A) At the time when revenue from a sale of the phonorecord is "recognized" by the compulsory licensee; or

(B) Nine months from the month in which the compulsory licensee actually first parted with possession, whichever occurs first.

For these purposes, a compulsory licensee shall be considered to "recognize" revenue from the sale of a phonorecord when sales revenue would be recognized in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board, whichever would cause sales revenue to be recognized first.

(8) To the extent that the terms reserve, credit and return appear in this section, such provisions shall not apply to digital phonorecord deliveries.

(9) A "phonorecord reserve" comprises the number of phonorecords, if any, that have been relinquished from possession for purposes of sale in a given month accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have not been considered voluntarily distributed during the month in which the compulsory licensee actually first parted with their possession. The initial number of phonorecords comprising a phonorecord reserve shall be determined in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board.

(10) A "negative reserve balance" comprises the aggregate number of phonorecords, if any, that

have been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have been returned to the compulsory licensee, but because all available phonorecord reserves have been eliminated, have not been used to reduce a phonorecord reserve.

(11) An incomplete transmission is any digital transmission of a sound recording which, as determined by means within the sole control of the distributor, does not result in a specifically identifiable reproduction of the entire sound recording by or for any transmission recipient.

(12) A retransmission is a subsequent digital transmission of the same sound recording initially transmitted to an identified recipient for the purpose of completing the delivery of a complete and usable reproduction of that sound recording to that recipient.

(b) Accounting requirements where sales revenue is "recognized". Where under paragraph (a)(5)(iii)(A) of this section, revenue from the sale of phonorecords is "recognized" during any month after the month in which the compulsory licensee actually first parted with their possession, said compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords for which revenue is being "recognized," as follows:

(1) If the number of phonorecords for which revenue is being "recognized" is smaller than the number of phonorecords comprising the earliest eligible phonorecord reserve, this phonorecord reserve shall be reduced by the number of phonorecords for which revenue is being "recognized." Subject to the time limitations of paragraph (a)(7)(iii)(B) of this section, the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(2) If the number of phonorecords for which revenue is being "recognized" is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eli-

gible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve and continuing to the next succeeding phonorecord reserves, that are completely offset by phonorecords for which revenue is being "recognized." Said licensee shall then reduce the next succeeding phonorecord reserve by the number of phonorecords for which revenue is being "recognized" that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of paragraph (a)(7)(iii)(B) of this section, the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(3) If the number of phonorecords for which revenue is being "recognized" equals the number of phonorecords comprising all eligible phonorecord reserves, the person or entity exercising the compulsory license shall eliminate all of the phonorecord reserves.

(c) Accounting requirements for offsetting phonorecord reserves with returned phonorecords.

(1) In the case of a phonorecord that has been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, where the phonorecord is returned to the compulsory licensee for credit or exchange before said compulsory licensee is considered to have "permanently parted with possession" of the phonorecord under paragraph (a)(5) of this section, the compulsory licensee may use such phonorecord to reduce a "phonorecord reserve," as defined in paragraph (a)(6) of this section.

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

(i) If the number of phonorecords that are returned during the month covered by the Monthly Statement is smaller than the number comprising

the earliest eligible phonorecord reserve, the compulsory licensee shall reduce this phonorecord reserve by the total number of returned phonorecords. Subject to the time limitations of paragraph (B) of § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

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

(iii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is equal to or is greater than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall eliminate all eligible phonorecord reserves. Where said number is greater than the total number of phonorecords comprising all eligible phonorecord reserves, said compulsory licensee shall establish a "negative reserve balance," as defined in paragraph (a)(10) of this section.

(3) Except where a negative reserve balance exists, a separate and distinct phonorecord reserve shall be established for each month during which the compulsory licensee relinquishes phonorecords from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section. In accordance with paragraph (B) of § 201.19(a)(5)(iii),

any phonorecord remaining in a particular phonorecord reserve nine months from the month in which the particular reserve was established shall be considered "voluntarily distributed"; at that point, the particular monthly phonorecord reserve shall lapse and royalties for the phonorecords remaining in it shall be paid as provided in paragraph (e)(4)(ii) of this section.

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

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

(d) Situations in which a compulsory licensee is barred from maintaining reserves. Notwithstanding any other provisions of this section, in any case where, within three years before the phonorecord was relinquished from possession, the compulsory licensee has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar action, to have failed to pay such royalties, that compulsory licensee shall be considered to have "Permanently par-

ted with possession" of a phonorecord made under the license at the time at which that licensee actually first parts with possession. For these purposes the "compulsory licensee," as defined in paragraph (a)(5) of this section, shall include:

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

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

(e) Monthly statements of account--

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

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

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

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

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

(iv) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the

copyright owner being served with the Monthly Statement and the name of the author or authors of such work or works, if known;

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

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

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

(3) Specific content of monthly statements: Identification and accounting of phonorecords.

(i) The information called for by paragraph (e)(2)(v) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information:

(A) The number of phonorecords, including digital phonorecord deliveries, made during the month covered by the Monthly Statement;

(B) The number of phonorecords that, during the month covered by the Monthly Statement and regardless of when made, were either:

Relinquished from possession for purposes other than sale;

Relinquished from possession for purposes of sale without any privilege of returning unsold phonorecords for credit or exchange;

Relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange;

Returned to the compulsory licensee for credit or exchange;

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);

Never delivered due to a failed transmission; or

Digitally retransmitted in order to complete a digital phonorecord delivery.

(C) The number of phonorecords, regardless of when made, that were relinquished from possession during a month earlier than the month covered by the Monthly Statement but that, during the month covered by the Monthly Statement either have had revenue from their sale "recognized" under paragraph (a)(5)(iii) of this section, or were comprised in a phonorecord reserve that lapsed after nine months under paragraph (B) of § 201.19(a)(5)(iii).

(ii) Each of the items of information called for by paragraph (e)(3)(i) of this section shall also include, and if necessary shall be broken down to identify separately, the following:

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

(B) The names of the principal recording artist or group engaged in rendering the per-

formances fixed on the phonorecords;

(C) The playing time on the phonorecords of each nondramatic musical work covered by the statement; and

(D) Each phonorecord configuration involved (for example: single disk, long-playing disk, cartridge, cassette, reel-to-reel, digital phonorecord delivery, or a combination of them).

(E) The date of and a reason for each incomplete transmission.

(4) Royalty payment and accounting.

(i) The total royalty called for by paragraph (e)(2)(vi) of this section shall, as specified in section 115(c)(2) of Title 17 of the United States Code, be payable for every phonorecord "voluntarily distributed" during the month covered by the Monthly Statement.

(ii) The amount of the royalty payment shall be calculated in accordance with the following formula:

Step 1: Compute the number of phonorecords shipped for sale with a privilege of return. This is the total of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee, accompanied by the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange. This total does not include: (1) Any phonorecords relinquished from possession by the compulsory licensee for purposes of sale without the privilege of return; and (2) any phonorecords relinquished from possession for purposes other than sale.

Step 2: Subtract the number of phonorecords reserved. This involves deducting, from the subtotal arrived at in Step 1, the number of phonorecords that have been placed in the phonorecord reserve for the month covered by the Monthly Statement. The number of phonorecords reserved is determined by multiplying the subtotal from

Step 1 by the percentage reserve level established under Generally Accepted Accounting Practices. This step should be skipped by a compulsory licensee barred from maintaining reserves under paragraph (d) of this section.

Step 3: Add the total of all phonorecords that were shipped during the month and were not counted in Step 1. This total is the sum of two figures: (1) The number of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee for purposes of sale, without the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange; and (2) the number of phonorecords relinquished from possession by the compulsory licensee, during the month covered by the Monthly Statement, for purposes other than sale.

Step 4: Make any necessary adjustments for sales revenue "recognized," lapsed reserves, or reduction of negative reserve balance during the month. If necessary, this step involves adding to or subtracting from the subtotal arrived at in Step 3 on the basis of three possible types of adjustments:

(a) Sales revenue "recognized." If, in the month covered by the Monthly Statement, the compulsory licensee "recognized" revenue from the sale of phonorecords that had been relinquished from possession in an earlier month, the number of such phonorecords is added to the Step 3 subtotal;

(b) Lapsed reserves. If, in the month covered by the Monthly Statement, there are any phonorecords remaining in the phonorecord reserve for the ninth previous month (that is, any phonorecord reserves from the ninth previous month that have not been offset under FOFI, the first-out-first-in accounting convention, by actual returns during the intervening months), the reserve lapses and the number of phonorecords in it is added to the Step 3 subtotal.

(c) Reduction of negative reserve balance. If, in the month covered by the Monthly Statement, the aggregate reserve balance for all previous months is a negative amount, the number of phonorecords relinquished from possession by the compulsory licensee during that month and used to reduce the negative reserve balance is subtracted from the Step 3 subtotal.

(d) Incomplete transmissions. If, in the month covered by the Monthly Statement, there are any digital transmissions of a sound recording which do not result in specifically identifiable reproductions of the entire sound recording by or for any transmission recipient, as determined by means within the sole control of the distributor, the number of such phonorecords is subtracted from the Step 3 subtotal.

(e) Retransmitted digital phonorecords. If, in the month covered by the Monthly Statement, there are retransmissions of a digital phonorecord to a recipient who did not receive a complete and usable phonorecord during an initial transmission, and such transmissions are made for the sole purpose of delivering a complete and usable reproduction of the initially requested sound recording to that recipient, the number of such retransmitted digital phonorecords is subtracted from the Step 3 subtotal.

Step 5: Multiply by the statutory royalty rate. The total monthly royalty payment is obtained by multiplying the subtotal from Step 3, as adjusted if necessary by Step 4, by the statutory royalty rate of 5.7 cents or 1.1 cents per minute or fraction of playing time, whichever is larger.

(iii) Each step in computing the monthly payment, including the arithmetical calculations involved in each step, shall be set out in detail in the Monthly Statement.

(5) Clear statements. The information required by paragraphs (e)(2) and (3) of this section involves intelligible, legible, and unambiguous statements in the Monthly Statements of Account itself and without incorporation of facts or in-

formation contained in other documents or records.

(6) Oath and signature. Each Monthly Statement of Account shall include the handwritten signature of the compulsory licensee. If that compulsory licensee is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that compulsory licensee is a partnership, the signature shall be that of a partner. The signature shall be accompanied by:

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

(ii) The date of signature;

(iii) If the compulsory licensee is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Monthly Statement of Account;

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

(v) The following statement:

I certify that I have examined this Monthly Statement of Account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(7) Service.

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

(ii)(A) In any case where a Monthly Statement of Account is sent by 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 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, may be filed in the Licensing Division of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

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

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

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

(iii) A separate Monthly Statement of Account shall be served for each month during which there is any activity relevant to the payment of royalties under section 115 of Title 17, United States Code, and under this section. The Annual Statement of Account identified in paragraph (f) of this section does not replace any Monthly Statement of Account.

(iv) 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 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 Monthly Statement of Account was served in a timely manner.

(f) Annual statements of account--

(1) Forms. The Copyright Office does not provide printed forms for the use of persons serving Annual Statements of Account.

(2) Annual period. Any Annual Statement of Account shall cover the full fiscal year of the compulsory licensee.

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

(i) The fiscal year covered by the Annual Statement;

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

(iii) 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.

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

(v) The title or titles of the nondramatic musical work or works embodied in phonorecords made

under the compulsory license and owned by the copyright owner being served with the Annual Statement and the name of the author or authors of such work or works, if known;

(vi) The playing time of each nondramatic musical work on such phonorecords;

(vii) For each nondramatic musical work that is owned by the same copyright owner being served with the Annual Statement and that is embodied in phonorecords covered by the compulsory license, a detailed statement of all of the information called for in paragraph (f)(4) of this section;

(viii) The total royalty payable for the fiscal year covered by the Annual Statement computed in accordance with the requirements of this section, together with a statement of account showing in detail how the royalty was computed. For these purposes, the applicable royalty as specified in section 115(c)(2) of Title 17 of the United States Code, shall be payable for every phonorecord "voluntarily distributed" during the fiscal year covered by the Annual Statement;

(ix) The total sum paid under Monthly Statements of Account by the compulsory licensee to the copyright owner being served with the Annual Statement during the fiscal year covered by the Annual Statement; and

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

(4) Specific content of annual statements: Identification and accounting of phonorecords.

(i) The information called for by paragraph (f)(3)(vii) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information separately stated and identified for each phonorecord configuration (for example,

single disk, long playing disk, cartridge, cassette, or reel-to-reel) made:

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

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

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

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

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

(F) The number of phonorecords "voluntarily distributed" by the compulsory licensee during the fiscal year covered by the Annual Statement, together with: (1) The catalog number or numbers, and label name or names, used on such phonorecords; and (2) the names of the principal recording artists or groups engaged in rendering the performances fixed on such phonorecords.

(ii) If the information given under paragraphs (f)(4)(i)(A) through (F) of this section does not reconcile, the Annual Statement shall also in-

clude a clear and detailed explanation of the difference. For these purposes, the information given under such paragraphs shall be considered not to reconcile if, after the number of phonorecords given under paragraphs (B), (C), (D), and (E) are added together and that sum is deducted from the number of phonorecords given under paragraph (A), the result is different from the amount given under paragraph (F).

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

(6) Signature and certification.

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

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

We have examined the attached "Annual Statement of Account Under Compulsory License For Making and Distributing Phonorecords" for the fiscal year ended (date) of (name of the compulsory licensee) applicable to phonorecords embodying (title or titles of nondramatic musical works embodied in phonorecords made under the compulsory license) made under the provisions

of section 115 of title 17 of the United States Code, as amended by Pub.L. 94-553, and applicable regulations of the United States Copyright Office. Our examination was made in accordance with generally accepted auditing standards and accordingly, included tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

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

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(City and State of Execution)

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(Signature of Certified Public Accountant or CPA Firm)

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Certificate Number

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Jurisdiction of Certificate

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(Date of Opinion)

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

shareholders.

(7) Service.

(i) Each Annual Statement of Account shall be served on the copyright owner or the agent with authority to receive Annual Statements of Account on behalf of the copyright owner to whom or which it is directed by mail or by reputable courier service on or before the 20th day of the third month following the end of the fiscal year covered by the Annual Statement. It shall not be necessary to file a copy of the Annual Statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (e)(7) of this section.

(ii) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (f)(3)(viii) of this section is greater than the amount stated in that Annual Statement under paragraph (f)(3)(ix) of this section, the difference between such amounts shall be delivered to the copyright owner together with the service of the Annual Statement. The delivery of such sum does not require the copyright owner to accept such sum, or to forego any right, relief, or remedy which may be available under law.

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

sender.

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

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

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

(iv) 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 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 Annual Statement of Account was served in a timely manner.

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

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

[45 FR 79046, Nov. 28, 1980; 56 FR 7813, Feb. 26, 1991; 56 FR 59885, Nov. 26, 1991; 63 FR 30635,

37 C.F.R. § 201.19

June 5, 1998; 64 FR 29521, June 1, 1999; 64 FR 36574, 36575, July 7, 1999; 64 FR 41289, July 30, 1999; 66 FR 34373, June 28, 2001; 69 FR 34584, June 22, 2004]

SOURCE: 24 FR 4955, June 18, 1959; 50 FR 30170, July 24, 1985; 50 FR 52459, Dec. 24, 1985; 56 FR 7812, 7813, Feb. 26, 1991; 56 FR 27197, June 13, 1991; 56 FR 28959, June 25, 1991; 56 FR 38341, Aug. 13, 1991; 57 FR 3296, Jan. 29, 1992; 57 FR 55465, Nov. 25, 1992; 58 FR 9546, Feb. 22, 1993; 59 FR 12164, March 16, 1994; 59 FR 23981, May 9, 1994; 59 FR 38371, July 28, 1994; 59 FR 67635, Dec. 30, 1994; 60 FR 25998, May 16, 1995; 60 FR 34168, June 30, 1995; 60 FR 50420, Sept. 29, 1995; 60 FR 57937, Nov. 24, 1995; 61 FR 30813, June 18, 1996; 62 FR 18710, April 17, 1997; 62 FR 55739, Oct. 28, 1997; 67 FR 69136, Nov. 15, 2002, unless otherwise noted.

AUTHORITY: 17 U.S.C. 702.; Section 201.10 also issued under 17 U.S.C. 304.

37 C. F. R. § 201.19, 37 CFR § 201.19

Current through November 21, 2006; 71 FR 67427

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**37 C.F.R. § 255.5**

37 C.F.R. § 255.5

**Effective: [See Text Amendments]**Code of Federal Regulations Currentness

Title 37. Patents, Trademarks, and Copyrights

Chapter II. Copyright Office, Library of Congress

- ▣ Subchapter B. Copyright Arbitration Royalty Panel Rules and Procedures (Refs & Annos)

- ▣ Part 255. Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords (Refs & Annos)

**→ § 255.5 Royalty rate for digital phonorecord deliveries in general.**

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

[60 FR 61657, Dec. 1, 1995; 64 FR 6223, Feb. 9, 1999]

SOURCE: 46 FR 891, Jan. 5, 1981; 58 FR 67691,

Dec. 22, 1993; 59 FR 23981, May 9, 1994; 59 FR 23993, May 9, 1994, unless otherwise noted.

AUTHORITY: 17 U.S.C. 801(b)(1) and 803.

37 C. F. R. § 255.5, 37 CFR § 255.5

Current through November 21, 2006; 71 FR 67427

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**37 C.F.R. § 255.6**

37 C.F.R. § 255.6

**Effective: [See Text Amendments]**

Code of Federal Regulations Currentness  
Title 37. Patents, Trademarks, and Copyrights  
Chapter II. Copyright Office, Library of Congress

▣ Subchapter B. Copyright Arbitration Royalty Panel Rules and Procedures (Refs & Annos)

▣ Part 255. Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords (Refs & Annos)

**→ § 255.6 Royalty rate for incidental digital phonorecord deliveries.**

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

[64 FR 6223, Feb. 9, 1999]

SOURCE: 46 FR 891, Jan. 5, 1981; 58 FR 67691, Dec. 22, 1993; 59 FR 23981, May 9, 1994; 59 FR 23993, May 9, 1994, unless otherwise noted.

AUTHORITY: 17 U.S.C. 801(b)(1) and 803.

37 C. F. R. § 255.6, 37 CFR § 255.6

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