

**Before the  
COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, DC**

In the Matter of	)	
	)	
Verification of Statements of Account	)	Docket No. 2012-5
Submitted by Cable Operators and	)	
Satellite Carriers	)	
	)	

**COMMENTS OF THE COPYRIGHT OWNERS**

The Joint Sports Claimants, Program Suppliers, Commercial Television Claimants, Broadcast Music, Inc., American Society of Composers, Authors & Publishers, and SESAC, Inc. (collectively, "Music Claimants"), Public Television Claimants, Canadian Claimants Group, National Public Radio, Broadcaster Claimants Group, and the Devotional Claimants (collectively, "Copyright Owners"), respectfully submit the following comments in response to the notice of proposed rulemaking and request for comments ("NPRM") published by the Copyright Office on June 14, 2012. Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers, 77 Fed. Reg. 35,643 (proposed Jun. 14, 2012) (to be codified at 37 C.F.R. pt. 201).

**BACKGROUND**

The NPRM stems from the passage of the Satellite Television Extension and Localism Act of 2010 ("STELA"), Pub. L. No. 111-175, 124 Stat. 1218, which directs the Register of Copyrights to adopt regulations allowing for the verification and auditing of statements of account (SOAs) filed by cable operators and satellite carriers in connection with the respective statutory licenses provided under §§ 111 and 119 of the Copyright Act. STELA took effect on

May 27, 2010. On January 31, 2012, Copyright Owners filed a petition (“Petition”) with the Office to initiate a rulemaking proceeding to implement the verification and audit provisions of STELA. The Office issued the NPRM on June 14, 2012.

In the NPRM, the Office proposes a single verification process that applies to audits of statements of account filed by cable operators and satellite carriers. The Office patterned the proposed rule on similar verification procedures it adopted in connection with the statutory licenses for the use of ephemeral recordings (17 U.S.C. § 112) and digital performance of sound recordings (17 U.S.C. § 114). *See* NPRM at 35,644 (citing verification procedures in 37 C.F.R. §§ 201.30, 260.5, 260.6, 261.6, 261.7, 262.6, 262.7).

#### **THE OFFICE’S PROPOSED VERIFICATION PROCEDURE**

Copyright Owners generally support the Office’s proposed framework for verifying statements of account filed by cable operators and satellite carriers. The Office’s proposed rule incorporates many of the provisions requested by Copyright Owners, and it is generally consistent with other verification procedures adopted by the Office. However, the Office’s proposal deviates from the recommendation of Copyright Owners in a few significant respects, which we address below in connection with the specific issues referenced in the Office’s NPRM. Copyright Owners urge the Office to consider certain changes to the proposed verification procedure and to adopt a final rule incorporating those changes as expeditiously as possible.

##### **A. Verification Procedures**

Section 119(b)(2) of the Copyright Act, as amended by STELA, directs the Office to adopt verification and audit procedures for statements of account filed by satellite carriers. As the Office notes in the NPRM, § 119(b)(2) contains little guidance regarding the contents of any verification procedure, in direct contrast to the corresponding provision that applies to audits and

verifications of cable operators (17 U.S.C. § 111(d)(6), as amended by STELA). NPRM at 35,644. Unaware of any potential policy reason for adopting different procedures for satellite carriers and cable operators, the Office proposes to use § 111(d)(6) as the blueprint for the regulations governing verifications and audits of satellite carriers. NPRM at 35,644.

Copyright Owners agree that where Congress has not identified a specific procedure regarding the verification of SOAs by satellite carriers, the Office should use the framework governing verification of SOAs filed by cable operators as the blueprint for similar regulations governing the SOAs filed by satellite carriers. Indeed, as the Office has noted, *see id.* at 35,644–35,645, the regulations proposed by Copyright Owners generally followed that approach, utilizing essentially identical procedures for verifications and audits of cable operators and satellite carriers.

B. Retroactivity

The NPRM precludes Copyright Owners from utilizing the verification process for SOAs filed prior to the first accounting period of 2010. NPRM at 35,645. STELA specifically precludes Copyright Owners from verifying or auditing SOAs filed by cable operators prior to the first accounting period of 2010, but it contains no such limitation on verifications of SOAs filed by satellite carriers. *Compare* 17 U.S.C. § 111(d)(6) (cable), *with* 17 U.S.C. §119(b)(2) (satellite). In their Petition, Copyright Owners proposed verification procedures that apply to pre-2010 SOAs filed by satellite carriers. Petition at 4 & Exhibit B. The Office, however, concluded that it lacks the power to impose a “retroactive” obligation on satellite carriers absent express direction from Congress. NPRM at 35,645. Consequently, the proposed rule limits copyright owners from verifying statements of account filed by both cable operators and satellite carriers prior to the first accounting period of 2010. *Id.*

While Copyright Owners disagree with the Office's characterization of a verification procedure for pre-2010 statements of account as a "retroactive" obligation, Copyright Owners nonetheless support the uniform approach proposed by the Office because they share the view that a single procedure "will reduce regulatory complexity for copyright owners" and "promote fairness among statutory licensees." *Id.* at 35,644.

C. Initiation of Audit

The NPRM provides that copyright owners would initiate the audit process by submitting a written notice of intent to audit to the Copyright Office and the affected statutory licensee. NPRM at 35,645. The proposed rule also contains certain requirements regarding the content of the notice, including identification of the copyright owner and a statement from that owner attesting to the fact that the owner had at least one work retransmitted in a secondary transmission by the affected licensee. *Id.* The rule then allows for other copyright owners to participate in the selection of the auditor by notifying the copyright owner who filed the notice of intent to audit within 30 days of the notice's publication in the Federal Register. *Id.* at 35,645–46.

Copyright Owners support the basic framework proposed by the Office, but the Office should modify the proposed rule so those representing groups of copyright owners can act on behalf of multiple copyright owners in initiating an audit. As the Office noted in the NPRM, the parties who filed the joint petition to initiate a rulemaking proceeding here are the beneficiaries of royalties paid pursuant to the §§ 111 and 119 statutory licenses. NPRM at 35,644 & n.1. Since the § 111 license was first adopted as part of the Copyright Act of 1976, copyright owners, in an effort to spread the costs of enforcement and eliminate free riding, have formed claimant groups to represent their interests in royalty distribution proceedings. The Office should allow

representatives of a group of copyright owners to initiate the verification process as long as they attest that they represent at least one copyright owner of a work that was the subject of a secondary transmission by the affected licensee during the period covered by the statement of account to be verified.

D. Designation of Auditor

Section 111(d)(6) of the Copyright Act, as amended by STELA, directs the Office to “establish procedures for the designation of a qualified independent auditor.” 17 U.S.C. § 111(d)(6). The Office proposes that if disputes arise regarding an auditor’s independence, the parties can attempt to resolve that dispute by appealing to the Board of the American Institute of Certified Public Accountants (“AICPA”) or state accountancy boards. NPRM at 35,646. Copyright Owners believe that resolving disputes in this manner will lead to needless delay and expense, a result not contemplated by STELA’s directive regarding auditor independence. Copyright Owners have particular concerns regarding delays that could result from challenges to an auditor’s independence given their interest in completing the verification process before the statute of limitations runs on bringing a copyright infringement suit. To address these concerns, Copyright Owners propose a modification to the rule that requires statutory licensees to raise promptly any concerns about an auditor’s independence and qualifications. If the statutory licensee is unable to resolve questions about an auditor’s independence or qualifications within thirty (30) days of the auditor’s selection, the auditor would be able to proceed with the proposed audit.

E: Time Period for Conducting Audit

Following the statutory language in § 111(d)(6), the Office proposes that copyright owners initiate the verification process “within 3 years after the last day of the year in which the

statement of account is filed.” NPRM at 35,647 (quoting 17 U.S.C. § 111(d)(6)(E)). The Office also rejected the proposal by Copyright Owners to impose certain response deadlines after an auditor is designated, arguing that “the amount of time required for an audit will vary depending on the number and complexity of the Statements of Account that will be subject to review.” *Id.*

Copyright Owners do not object to initiating the request for verification within three years of the last day of the year on which an SOA was filed. However, Copyright Owners strongly disagree with the Office’s failure to include any deadline for responding to audit requests. If the auditors or licensees have no express obligation to respond within a designated time frame, the likely result will be needless delay and added expense for those funding the audit. Copyright Owners agree that some audits will be more complex than others. The remedy, however, is to provide additional flexibility where needed, particularly in the case of audits of multiple system operators (MSOs). Accordingly, Copyright Owners suggest a modification to the proposed rule that grants MSOs an additional thirty (30) to ninety (90) days depending on the number of SOAs examined as part of the audit.

F. Retention of Records

The rule proposed by the Office requires statutory licensees to maintain records related to SOAs for forty-two (42) months after the last day of the year in which an SOA is filed. NPRM at 35,647. Copyright Owners believe the Office should clarify that when a party files an amended SOA, the time period for maintaining records related to such amended SOAs should run from the date of that amendment, not the date of the original SOA. Copyright Owners have incorporated a modification to the proposed rule that clarifies that the retention obligation runs from the date on which an amendment is filed.

G. Frequency of Audit Procedure

The rule proposed by the Office contains limitations on the number of times cable systems and satellite carriers can be audited. First, the rule provides that an SOA may be audited no more than once. NPRM at 35,647. And to address Congress's directive that the Office "limit the frequency of requests for verification for a particular cable system and the number of audits that a [MSO] can be required to undergo in a single year," 17 U.S.C. § 111(d)(6)(D), the proposal limits audits of satellite carriers and cable operators with one system to one per year while allowing no more than three audits of an MSO in a given year. NPRM at 35,647. The Office also proposes a cap on the number of systems that can be the subject of an MSO audit, proposing that no more than fifty percent of an MSO's systems be included as part of a "sample" examined by the auditor. *Id.* at 35,647–48.

Copyright Owners support the Office's general approach to MSO audits, but the Office should consider two modifications to the proposal. First, the rule should specifically define an MSO to avoid any confusion about which systems are covered by the rule, and the definition should focus on whether the entity in question owns, controls, or has primary responsibility for operating more than one cable system. In addition, if the audit of the MSO uncovers an underpayment of five percent or more, the rule should grant the auditor the authority to extend the audit to the entire MSO universe, including those systems whose SOAs may have been previously examined as part of another audit. An MSO should not be able to avoid addressing pervasive issues uncovered in a subsequent audit of the MSO's other systems merely because the newly found problems were not uncovered in a prior audit. The proposed rule should, however, limit the scope of any re-audit of an SOA to the newly found issue or issues resulting in an underpayment of five percent or more found during the subsequent audit.

H. Proposed Remedies for Cable Operators and Satellite Carriers

Following STELA's express direction, the Office has proposed a consultation period for the independent auditor to review its conclusions and findings with a representative of affected cable systems. NPRM at 35,648 (citing 17 U.S.C. § 111(d)(6)(C)(i)–(iii)). Although STELA does not require a similar consultation process for satellite carriers, the Office's proposed consultation procedures apply to both cable operators and satellite carriers. Copyright Owners believe that a uniform consultation process is reasonable and support the Office's general approach.

The Office, however, deviates from the suggested approach of the Copyright Owners by eliminating any deadline for curing an underpayment as the result of the findings in an audit. The Office notes that there already exists a mechanism for amending SOAs and providing supplemental payments to the Copyright Office to correct underpayments. *Id.* at 35,649 (citing 37 C.F.R. §§ 201.11(h)(1), 201.17(m)(3)). The Office appears to believe the existing mechanism is sufficient for curing underpayments, noting that supplemental payments can be made “before, during, or after a verification procedure.” *Id.* Although the Office says that “it would be in the best interest of the licensee to file an amended [SOA] and any royalty fees owed as soon as possible to avoid accruing additional interest payments and possible exposure to an infringement suit,” *id.*, the Office's failure to impose a “curing” deadline creates a perverse incentive for the non-complying licensee to avoid amendment and additional royalty payments until either the statute of limitation runs or a copyright owner drafts an infringement complaint.

Where an *independent* auditor concludes that a licensee has not paid the appropriate royalties for use of the license, the Office should require that a licensee who wishes to take advantage of STELA's safe harbor, *see* 17 U.S.C. § 111(d)(6)(C)(i)–(iii), must file a



supplemental SOA and accompanying payment within 30 days of the issuance of the final report. If, after that point, the licensee chooses to ignore the findings of that independent body, the licensee should bear the risks of an adverse infringement judgment. To address the perverse incentives that would otherwise result in the absence of a “curing” deadline, Copyright Owners have proposed a modification of the rule that would require cable operators or satellite carriers to cure any underpayment within 30 days of the issuance of the auditor’s final report in order to take advantage of STELA’s safe harbor.

To avoid unnecessary delay, Copyright Owners also propose that the Office adopt a hard deadline for issuing the final report. The current proposal calls for the auditor to distribute his or her final report “[n]o less than 60 days after the date that the auditor delivered his or her report to the statutory licensee.” If the auditor has consulted with the statutory licensee, Copyright Owners see no basis for delaying delivery of the final report until 60 days have elapsed; the rule should instead require a deadline by which the auditor *must* deliver the final report. Accordingly, Copyright Owners propose that the Office modify the rule so that the auditor is required to deliver the final report to the copyright owner(s) within sixty days of the date on which the report was provided to the statutory licensee.

#### I. Cost of Audit Procedure

The Office proposes that Copyright Owners pay for the costs of audits except where the audit reveals an underpayment of five percent or more, in which case, the affected licensee will be required to pay for the costs of the audit. NPRM at 35,649. That approach is consistent with the allocation of costs in other statutory license contexts, *see, e.g.*, 37 C.F.R. § 201.30(i) (requiring licensee to pay for verification costs if underpayment exceeds five percent); 37 C.F.R. § 260.5(f) (requiring service that made underpayment to pay costs of verification if

underpayment exceeds five percent). Copyright Owners support the use of that approach in this context.

J. Confidentiality

The proposed rule provides that only auditors and those working on their behalf, including support staff, are entitled to access confidential business information maintained by the statutory licensees. STELA requires that the Office establish procedures for “safeguarding all non-public financial and business information” maintained by licensees. NPRM at 35,649–50. The Office has invited the parties to comment on whether situations exist in which copyright owners would need access to confidential information as part of the verification process.

Copyright Owners believe that the Office should modify its proposal to allow copyright owners or their designated representatives to review confidential materials so long as copyright owners enter into a binding non-disclosure agreement with respect to the review of those materials. Such access may be necessary in the event that statutory licensees dispute the findings and conclusions in the auditor’s final report and the dispute relates to the interpretation of confidential business information examined by the auditor. Consistent with the approach adopted by the Office for verifications involving digital audio recording technology, 37 C.F.R. § 201.29(d)(1), Copyright Owners do not object to a limitation that precludes any party that is owned or controlled by another statutory licensee from accessing such confidential information. Copyright Owners also agree that access to confidential information should be limited to situations in which a “bona fide royalty dispute” exists. *Cf.* 37 C.F.R. § 262.5(d)(5).

**CONCLUSION**

For the reasons set forth above, Copyright Owners respectfully request that the Copyright Office modify its proposed rule in the manner suggested by Copyright Owners.

Respectfully submitted,

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

(a) *General.* This section prescribes general rules pertaining to the verification of a Statement of Account and royalty fees filed with the Copyright Office pursuant to sections 111(d)(1) and 119(b)(1) of title 17 of the United States Code, as amended by Pub. L. 111-175.

(b) *Definitions.* (1) *Auditor* means a qualified and independent accountant who is not an officer, employee or agent of a copyright owner, but has been selected to audit a Statement of Account on behalf of copyright owners under sections 111(d)(6) and 119(b)(2) of title 17 of the United States Code, as amended by Pub. L. 111-175.

(2) The term *cable system* has the meaning set forth in § 201.17(b)(2) of this chapter.¶

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

**(4) (3) Copyright owner means the copyright owner of a work or a designated agent or representative of a copyright owner or group of copyright owners, whose works were embodied in a secondary transmission made by a statutory licensee that filed a Statement of Account with the Copyright Office for an accounting period beginning on or after January 1, 2010.**

**(5) (4) Generally accepted auditing standards (GAAS) means the auditing standards promulgated by the American Institute of Certified Public Accountants.**

**(6) (5) The term *satellite carrier* has the meaning set forth in section 119(d)(6) of title 17 of the United States Code.**

**(7) (6) The term *secondary transmission* has the meaning set forth in section 111(f)(2) of title 17 of the United States Code, as amended by Pub. L. 111-175.**

**(8)** ~~(7)~~ *Statement of Account or Statement* means a semiannual Statement of Account filed with the Copyright Office for an accounting period beginning on or after January 1, 2010 under sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Pub. L. 111-175.

**(9)** ~~(8)~~ *Statutory licensee or licensee* means a cable system or satellite carrier that filed a Statement of Account with the Office under sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Pub. L. 111-175.

(c) *Notice of intent to audit.* Any copyright owner that intends to audit a semiannual Statement of Account must notify the Register of Copyrights no later than three years after the last day of the year in which the Statement was filed with the Office. The notice shall identify the statutory licensee that filed the Statement(s) with the Copyright Office, the Statement(s) and accounting period(s) that will be subject to the audit, and the copyright owner that filed the notice, including its name, address, telephone number, facsimile number, and email address, if any. In addition, the notice shall include a statement establishing that the copyright owner owns, **or represents at least one party that owns,** a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in the Statement(s) of Account that will be subject to the audit. The copyright owner shall serve the notice of intent to audit on the statutory licensee at the same time that the notice is filed with the Copyright Office. Within 30 days after the notice has been received in the Office, the Office will publish a notice in the FEDERAL REGISTER announcing the receipt of the notice of intent to audit.

(d) *Selection of the auditor.* Any other copyright owner who wishes to participate in the audit of the Statement(s) of Account identified in a notice of intent to audit must notify the

copyright owner that filed the notice of intent to audit within 30 days of the publication of the notice in the FEDERAL REGISTER. Those copyright owner(s) who have agreed to participate in the audit shall designate an independent and qualified auditor to audit the Statement(s) on behalf of all copyright owners who own a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in those Statement(s). Any dispute about the selection of the auditor shall be resolved by these copyright owner(s). Promptly after the auditor has been selected, these copyright owner(s) shall provide the statutory licensee with the auditor's name, address, telephone number, facsimile number, and email address, if any.

(e) *Independence and qualifications of the auditor.* (1) The auditor shall be qualified and independent as defined in this subsection. If the statutory licensee has reason to believe that the auditor is not qualified or independent, it shall **promptly** raise the matter with the copyright owner(s) who selected the auditor before the commencement of the audit. If the matter is not resolved, the statutory licensee may raise the issue with the American Institute of Certified Public Accountants' ("**AICPA**") Professional Ethics Division and/or the auditor's State Board of Accountancy while the audit is being performed. **If AICPA's Ethics Division and/or the auditor's State Board of Accountancy cannot resolve the challenge over an auditor's qualifications and/or independence within thirty (30) days of the auditor's selection, the auditor may proceed with the audit.**

- (2) An auditor shall be considered qualified **and independent** if:
- (i) He or she is a certified public accountant,
  - (ii) He or she is not an officer, employee, or agent of a copyright owner for any purpose other than the audit;



(iii) He or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules, and Interpretations of such Code applicable generally to attest engagements; and

(iv) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

(f) *Scope of the audit.* The audit shall be performed in accordance with generally accepted auditing standards (GAAS).¶

**(g) *Response from the Statutory Licensee.* The statutory licensee shall afford the Qualified Independent Auditor unrestricted access to all such records related to the Statement of Account to be verified within thirty (30) days of receiving a request from the auditor, except that MSOs may respond to such requests within sixty (60) days where the audit involves an examination of ten (10) or more Statements of Account or within ninety (90) days where an audit involves an examination of more than thirty (30) Statements of Account. In the event that a statutory licensee needs additional time to respond, the statutory licensee can request an extension from the auditor, who has the discretion to grant an extension of not more than sixty (60) days.**

**(h)** ~~(g)~~ *Consultation.* Before delivering a report to any copyright owner(s), except where the auditor has a reasonable basis to suspect fraud and that disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall deliver a copy of that report to the statutory licensee and shall review his or her conclusions with a designee of the licensee within 30 days thereafter. If the statutory licensee disagrees with any of the facts or conclusions set forth in the report, the licensee may provide the auditor with a

written response setting forth its views within two weeks after the date of the initial consultation between the auditor and the licensee's designee. If the auditor agrees that there are errors in the report, he or she shall correct those errors before the report is delivered to the copyright owner(s). The auditor shall include the licensee's written response, if any, as an attachment to his or her report before it is delivered to any copyright owner(s).

**(i)** ~~(h)~~ *Corrections and supplemental payments.* Where the auditor has concluded that any of the information given in a Statement of Account is incorrect or incomplete, that the calculation of the royalty fee payable for a particular accounting period was incorrect, or that the amount deposited in the Copyright Office for that period was too low, a licensee may file within thirty (30) days of the date when the auditor's report is provided to the copyright owner(s) a correction to the Statement of Account and supplemental royalty fee payments with the Office in accordance with the procedures set forth in §§ 201.11(h) or 201.17(m).

**(j)** ~~(i)~~ *Distribution of the auditor's report.* No lessmore than 60 days after the date that the auditor delivered his or her report to the statutory licensee and subject to the confidentiality provisions set forth in paragraph ~~(m)~~ of this section, the auditor shall deliver a written report to the copyright owner(s) who retained the auditor's services setting forth his or her conclusions. At the same time the auditor shall deliver a copy of that report to the statutory licensee. The copyright owner(s) shall retain this report for a period of not less than three years.

**(k)** ~~(j)~~ *Costs of the audit.* The copyright owner(s) who selected the auditor shall pay the auditor for his or her work in connection with the audit, unless the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that is subject to the audit, in which case, the auditor's fee shall be paid by the statutory licensee that deposited that Statement with the Copyright Office with the proviso that if a court, in a final

judgment (*i.e.*, after all appeals have been exhausted) rejects that determination, the copyright owners will reimburse the licensee for its payment of the auditor's services.

(1) ~~(1)~~ *Frequency of verification.* (1) Subject to the limitations in paragraph ~~(1)~~(3) of this section, a copyright owner may include more than one Statement of Account in its notice of intent to audit, but each Statement of Account shall be subject to audit only once, **except as otherwise provided in paragraph (1)(3) of this section.** Once a notice of intent to audit a particular semiannual Statement of Account has been received in the Office, a notice of intent to audit the same Statement of Account will not be accepted for publication in the FEDERAL REGISTER.

(2) ~~(1)~~ A satellite carrier or a cable operator that owns a single cable system shall be subject to no more than one audit per calendar year.

(3) ~~(2)~~ ~~A cable operator that owns multiple cable systems~~ **An MSO** shall be subject to no more than three audits per calendar year. Each audit shall be limited to a sampling of no more than fifty percent of the cable systems owned by that ~~operator~~ **MSO**, unless the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account filed by that ~~operator~~ **MSO**, in which case, the audit may be expanded to include any and all of the cable systems owned ~~by that operator.~~, **operated, or controlled by that MSO, including Statements of Account that had previously been audited; provided, however, that the auditor's verification of a Statement of Account that was subject to a prior audit be limited to the specific issue(s) which resulted in the underpayment that triggered the expanded audit.** The specific cable systems to be included within each sampling shall be selected by the copyright owner(s) who retained the auditor's services. The limitation on the number of systems under common ownership that can be audited in a calendar year does not

limit in any way the number of Statements of Account submitted by the selected systems that may be audited in a calendar year.

(m) ~~(l)~~ *Retention of records.* For each semiannual Statement of Account that a statutory licensee files with the Copyright Office for accounting periods beginning on or after January 1, 2010, the licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in each Statement for at least three and a half years after the last day of the year in which that Statement or an amendment of that Statement was filed with the Office. If the Office publishes a FEDERAL REGISTER notice announcing the receipt of a notice of intent to audit a specific Statement of Account, the statutory licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in that Statement for at least three years after the date that the auditor delivers a written report setting forth his or her conclusions to the copyright owner(s) who retained the auditor's services.

(n) ~~(m)~~ *Confidentiality.* (1) For purposes of this section, confidential information shall include any non-public financial or business information pertaining to a Statement of Account that has been subjected to an audit under sections 111(d)(6) or 119(b)(2) of title 17 of the United States Code, as amended by Pub. L. 111-175. Confidential information also shall include any information so designated in a confidentiality agreement which has been duly executed between a statutory licensee and any other interested party, or between one or more interested parties; *provided* that all such information shall be made available for the audit procedure provided for in this section.

- (2) Access to confidential information under this section shall be limited to:
  - (i) The auditor; and

(ii) Subject to an appropriate confidentiality agreement, **representatives of the copyright owners who joined in the audit and** those employees, agents, consultants and independent contractors of the auditor who are not employees, officers, or agents of a copyright owner for any purpose other than the audit, who are engaged in the audit of a Statement of Account or activities directly related hereto, and who require access to the confidential information for the purpose of performing such duties during the ordinary course of their employment.

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