

(3) If the Notice is sent by certified or registered mail to the last address for the copyright owner shown by the records of the Copyright Office and 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 (e)(3) shall be submitted to the Licensing Division of the Copyright Office, and 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 by appropriate evidence that it was sent by certified or registered mail to that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, as shown by the evidence mentioned above, as the date of filing. A written acknowledgement of receipt and filing will be provided to the sender. No filing fee will be required in the case of Notices filed under this paragraph (e)(3). Upon request and payment of the fee specified in §201.3(e), a Certificate of Filing will be provided to the sender.

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

[45 FR 79045, Nov. 28, 1980, as amended at 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]

§ 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, as amended by Pub. L. 94-553, 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, as amended by Pub. L. 94-553, 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. In such cases, the service of a Statement of Account, on one co-owner under paragraph (e)(7) or (f)(7) of this section shall be sufficient with respect to all co-owners.

(4) 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 of title 17 of the United States Code.

(5) 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.

(6) Except as provided in paragraph (a)(5), 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

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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.

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

(8) 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.

(9) 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 elimi-

nated, have not been used to reduce a phonorecord reserve.

(10) 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.

(11) 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 subparagraph (B) of this §201.19(a)(5)(iii), 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 eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve and continuing to the next succeeding phonorecord reserves, that are completely offset by phonorecords for which revenue is being "recognized." Said 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 subparagraph (B) of this §201.19(a)(5)(iii), 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)(7) 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 parted 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 § 201.19(a)(4), 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 performances 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

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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 information 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 certified mail or registered mail and is returned to the sender because the copyright owner 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 Monthly Statement of Account, together with any evidence of mailing, 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 acknowledgement 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 § 202.19(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 § 201.19(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.

(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 Compul-

sory 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) A statement of the nature of the business organization used by the compulsory licensee in connection with the making and distribution of phonorecords (for example, a corporation, a partnership, or an individual proprietorship); additionally:

(A) If the compulsory licensee is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall state that this is the case.

(B) If the compulsory licensee is a corporation that is not registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation.

(C) In all other cases, the Annual Statement shall include the names of each entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity exercising the compulsory license. If a corporate entity is named in response to this paragraph (C), then: If that corporation is registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall so state; if that corporation is not so registered, the Annual Statement shall include a list of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of that corporation;

(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

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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 (A) through (F) of this §201.19(f)(4)(i) does not reconcile, the Annual Statement shall also include 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 [subject to paragraph (f)(3)(iii)(A)] 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 com-

pulsory 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.

(City and State of Execution)

(Signature of Certified Public Accountant or CPA Firm)

Certificate Number

Jurisdiction of Certificate

(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 to whom or which it is directed by certified mail or by registered mail on or before the twentieth 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 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

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remedy which may be available under law.

(iii)(A) In any case where an Annual Statement of Account is sent by certified mail or registered mail and is returned to the sender because the copyright owner 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, 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 § 202.19(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.

(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.

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

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

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§ 201.20 Methods of affixation and positions of the copyright notice on various types of works.

(a) *General.* (1) This section specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Pub. L. 94-553. A notice considered "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be "affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright." As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(2) The provisions of this section are applicable to copies publicly distributed on or after December 1, 1981. This section does not establish any rules concerning the form of the notice or the legal sufficiency of particular notices, except with respect to methods of affixation and positions of notice. The adequacy or legal sufficiency of a copyright notice is determined by the law in effect at the time of first publication of the work.

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

(1) The terms *audiovisual works, collective works, copies, device, fixed, machine, motion picture, pictorial, graphic, and sculptural works*, and their variant forms, have the meanings given to them in section 101 of title 17.

(2) *Title 17* means title 17 of the United States Code, as amended by Pub. L. 94-553.

(3) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a "page" is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms "page" and "leaf" mean the same.

(4) A work is published in *book form* if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this section, a work need not consist of