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November 10, 2020

VIA EMAIL

Regan Smith
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. SE
Washington, D.C. 20559-6000
regans@copyright.gov

Re: *Ex Parte* Letter re: November 6, 2020 Copyright Office Virtual Meeting

Dear Ms. Smith,

This letter is to follow up on the *ex parte* meeting held with Digital Licensee Coordinator, Inc. ("DLC") to further discuss issues raised by the Office's rulemaking on the transition period transfer and reporting of royalties to the Mechanical Licensing Collective.[1] We addressed two topics. First, we provided an update on ongoing discussions with the Mechanical Licensing Collective ("MLC") related to the cumulative statement of account for historic unmatched accrued royalties. Second, we addressed an issue that recently came to the DLC's attention relating to pass-through licensing of permanent downloads.

The following summarizes the discussion and follows up on particular questions asked by the Copyright Office.

Cumulative Statement of Account Regulations

We first discussed the Office's recently issued supplemental notice of proposed rulemaking, and the proposed regulations relating to the format and requirements of the cumulative statement of account.[2] DLC will have more detailed comments to offer as part of the written comments. But as we discussed, we believe that the new proposed rule is an important step in the right direction. In particular, we agree that, consistent with the statute, the cumulative statement of account delivered on February 15 should only be required to include the information that would have been required to be reported under the preexisting monthly statement of account regulations.[3]

[1] A list of attendees is provided in an addendum.

[2] 85 Fed. Reg. 70544 (Nov. 5, 2020) ("SNPRM").

[3] 17 U.S.C. § 115(d)(10)(B)(iv)(II)(aa).

We also support the changes to the provision relating to reporting of partially paid works. Specifically, we support allowing reporting of aggregate paid amounts without breaking down by copyright owner, and requiring services to provide information held by third-party vendors only if made available on commercially reasonable terms.

DLC also explained its support for providing additional information beyond the information that would have been required under the preexisting monthly statement of account regulations that could aid the MLC's efforts to match historic unmatched works, including information about partially paid works and relevant metadata. To that end, DLC discussed the progress that it has made working with the MLC to develop a specific reporting framework, with detailed data fields that would allow for the reporting of the required cumulative statement of account by February 15, with supplemental metadata and partially paid works information being reported at a later date. With respect to both the additional metadata *and* information about partially paid works, there are significant operational and commercial obstacles to producing and submitting the reports by February 15—including the volume of data, the *sui* generis nature of the reporting of historic unmatched, questions related to how to reconcile recent metadata with historic usage, and ongoing work with vendors to procure and produce some of the information. We believe that we are close to agreement with the MLC at the operational level, essentially narrowing the open questions to ones related to how both the additional metadata and the paid party information would be merged with the underlying historic usage information. We hope to report back to the Office with a joint proposal.

We also discussed the DLC's view that the supplemental reporting of both metadata and partially paid works information should not be tied to the limitation of liability. We remain consistent in our view that the statute specifically conditions the limitation on liability on reporting *only* the information that would have been reported under the preexisting monthly statement of account regulations, even as we have been working in good faith with the MLC to develop a pathway to provide additional information that could be beneficial in matching and paying the historic usage.

During the *ex parte* meeting a question was raised about the ability of the Office to separately allow for estimates of accrued royalties after accounting for certain agreements under which publishers released their entitlement to such royalties,[4] given the DLC's understanding of the statute. In particular, the Office observed that the existing monthly statement of account regulations only specifically reference the ability to make estimates for public performance royalties.[5] But services in their monthly statements of account in fact make a wide range of estimates that later are finalized as part of the annual statement of account process. These include the total cost of content (*i.e.*, the consideration paid to record labels) which is often subject to various minimum guarantees or other payment terms that are not determined until year end.[6]

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[4] Proposed Rule § 210.10(c)(5).

[5] 37 C.F.R. § 210.16(d)(3)(i).

[6] 37 C.F.R. § 385.2 (defining "Total Cost of Content" to include anything of value given for the identified rights to undertake the Licensed Activity, including, without limitation, ownership

Similarly, stream counts may not be finalized until the end of the year, after applying algorithms that might identify fraudulent streams.[7] On occasion, playing time figures have to be adjusted based on updated metadata received from record labels after a monthly statement of account has been issued.[8] This standard industry practice is consistent with the statement of account regulations which require, as part of monthly statements, that royalty calculations "be made in good faith and on the basis of the best knowledge, information, and belief of the licensee at the time payment is due."[9] The annual statement of account regulations, in turn, require computing the royalties again for the entire year, with an explanation of any differences,[10] and the payment of extra royalties as needed.[11] That annual process is thus used to finalize estimates in the monthly statement of account. The reason the existing regulations specifically highlight performance royalties is because that input is frequently not resolved within the ordinary annual cadence; that is why the provision related to *amended* annual statements of account only references finalizing estimates of public performance royalties.[12] Given that understanding of the extant regulatory regime, the proposed regulations in the SNPRM related to estimates of accrued royalties are entirely consistent with the DLC's understanding of the statute.

In any event, to clarify our position, we believe the Office, as part of the exercise of its general rulemaking authority,[13] can adopt supplementary regulations that account for the different context of the cumulative statement of account, including the fact that the cumulative statement of account addresses unmatched usage, whereas the monthly statement of account addresses, by definition, matched usage. It is this different context that necessitates supplementary regulatory guidance on how to address releases of claims to accrued royalties related to unmatched usage. The preexisting monthly statement of account rules do not account for this particular wrinkle because if a copyright owner had released a claim to royalties via a private agreement, any usage that was eventually matched to that copyright owner would not have resulted in the payment of royalties, and so no monthly statement of account would have been generated. In contrast, the MMA (1) requires maintenance of royalties under GAAP (which, as the Office has recognized,

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equity, monetary advances, barter or any other monetary and/or nonmonetary consideration, whether that consideration is conveyed via a single agreement).

[7] 37 C.F.R. § 385.2 (defining "Play" to exclude "an Eligible Interactive Stream or play of a an Eligible Limited Download that has not been initiated or requested by a human user").

[8] The Office has specified that, for purposes of usage reporting to the MLC after license availability date, the playing time as measured from the sound recording audio file should be used. 37 C.F.R. § 210.27(e)(1)(i)(D). In the past, however, many services relied on record label metadata to determine the playing time for royalty payment purposes, entirely consistently with regulations then in force. 37 C.F.R. § 210.16(c)(3)(v) (requiring reporting of the playing time without specifying the method for determining playing time).

[9] 37 C.F.R. § 210.16(d)(3).

[10] 37 C.F.R. § 210.17(d)(2)(ii).

[11] 37 C.F.R. § 210.17(g)(4).

[12] 37 C.F.R. § 210.17(d)(2)(iii).

[13] 17 U.S.C. § 115(d)(12)(A).

includes rules related to derecognition of liabilities) at the same time as it (2) requires the reporting of *all* unmatched usage to the MLC, even though some of that usage may be attributable to a copyright owner that has released any further claims to additional royalties. The supplementary rules the Office has proposed address how to deal with that particular context, which is unique to the cumulative statement of account. The Office's authority similarly extends to providing an adjustment mechanism for the cumulative statement of account, akin to the adjustment mechanism provided for in the existing annual statement of account regulations. Importantly, these types of supplementary regulations do not add additional *conditions* on the limitation on liability, but instead simply provide further guidance on *how* to provide "the information that would have been provided to the copyright owner" in the context of usage that has not been matched to any particular copyright owner.[14]

Reporting Under Pass-Through Licenses for Permanent Downloads

Over the course of the last several weeks, the MLC and DLC have been discussing an issue related to reporting by digital music providers that operate download stores, whether on a standalone basis or side-by-side with an interactive streaming service. As background, and as far as DLC is aware, all download stores operate exclusively under so-called "pass-through" licenses received from record labels, where the label obtains the mechanical licenses from musical work copyright owners and then authorizes downstream distributors to make and distribute permanent downloads.[15] Importantly, this means that download store operators have no direct relationship with musical work copyright owners, and instead report and make payments to the record labels, with the labels then paying the appropriate royalties to musical works copyright owners.

Although record labels can (and occasionally do) use the compulsory license, the "mechanical licensing is still largely accomplished through voluntary licenses that are issued through a mechanical licensing agency such as HFA or by the publisher directly."[16] That said, these licenses "typically incorporate the key elements of section 115," including the pass-through feature.[17]

Significantly, Congress in the MMA specifically and expressly intended to "maintain[] the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads." H. Rep. No. 115-651, at 4 (2018). It created specific rules for "individual download licenses," which were defined as "a compulsory license *obtained by a record company* to make and distribute, *or authorize the making and distribution of*, permanent downloads embodying a specific individual musical work." 17 U.S.C. 115(e)(12) (emphases added).

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[14] 17 U.S.C. § 115(d)(10)(B)(iv)(II)(aa).

[15] U.S. Copyright Office, *Copyright and the Music Marketplace* 27-28, 131-132 (2015).

[16] *Id.* at 30-31.

[17] *Id.* at 31.

The present discussion between the MLC and DLC centers around the meaning of a particular provision—17 U.S.C. § 115(d)(4)(A)(ii)(II), which states as follows:

> In reporting usage of musical works to the mechanical licensing collective, a digital music provider shall provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses and individual download licenses. In the report of usage, the digital music provider shall—
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> * * *
>
> (II) identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported

It is common ground between the MLC and DLC that this provision does *not* require reporting of contact information for musical work copyright owners for permanent downloads made pursuant to authority obtained from a record label that has secured "individual download licenses" for such downloads. That is because the statute clearly draws a distinction between "individual download licenses" and "voluntary licenses"—the former is defined as a type of "compulsory license"[18] and the latter is defined as a "license . . . other than a compulsory license."[19] Nevertheless, the MLC has taken the view that a service operating a download store must report contact information for musical work copyright owners for those permanent downloads that are made under authority received from record labels pursuant to a *voluntary variant* of the compulsory license.

But download stores are not even aware when a label is relying on a compulsory license and when it is relying on a voluntary variant thereof. Nor have they ever received contact information for musical work copyright owners from record labels.[20] This information is not provided by record labels to download stores through existing reporting mechanisms such as DDEX feeds, and for this to occur would require record labels and digital music providers to invest resources to build entirely new systems. The reality is that services are not likely to make

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[18] 17 U.S.C. § 115(e)(12).

[19] 17 U.S.C. § 115(e)(36).

[20] Notably the MMA's reporting regulations only require digital music providers to pass through musical work ownership information only "to the extent acquired in the metadata provided by sound recording copyright owners or other licensors of sound recordings." 17 U.S.C. § 115(d)(4)(A)(ii)(I)(bb). The MLC would require download stores to identify and provide contact information for all downloads, or risk default.

those investments, especially because purchases of permanent downloads, while still significant, are declining.[21] It is far more likely that download stores would simply cease operations.

There is no cause for such a result. The MLC does not need musical work copyright owner contact information for permanent downloads for any of its functions. Indeed, any such claim by the MLC would make no sense in light of the fact that the MLC has no entitlement to such contact information for downloads made and distributed pursuant to individual download licenses. This stands in contrast to voluntary licenses that are between digital music providers and musical work copyright owners, where the MLC has an obvious practical need for such information, so it can carve out works and shares of works covered by such voluntary licenses in calculating royalties owed under the blanket license. Furthermore, the MLC will already have comprehensive copyright owner contact information (and other ownership data) because of its statutory responsibilities in the area of interactive streaming, where pass-through mechanical licenses are not generally used. For the MLC to collect the same information separately in connection with permanent downloads would be needless.

DLC believes that, in light of the congressional intent and background industry practice against which Congress was legislating in the MMA, section 115(d)(4)(A)(ii)(II) cannot rightly be read to encompass pass-through record company download licenses, even if entered into outside the compulsory licensing scheme. First, given the fact that this is a reporting requirement for digital music providers, the reference to "voluntary licenses" should be understood to refer to voluntary licenses that *digital music providers* have entered into directly with musical work copyright owners (or their agents, as in the case of publishing administrators). Neither the individual download license nor its voluntary variants are "voluntary licenses" held by digital music providers. As the statute indicates, such licenses are "obtained by a record company."[22] And when the statute refers specifically to the digital music provider's rights pursuant to pass-through licenses, it refers to them not as "voluntary licenses" but as the "*authority* to make and distribute permanent downloads of a musical work obtained by a digital music provider from a sound recording copyright owner pursuant to an individual download license."[23] Indeed, the exclusion of individual download licenses from section 115(d)(4)(A)(ii)(II) suggests that Congress understood that a digital music provider operating under a pass-through license could not be made to provide contact information for a copyright owner with whom it has no direct relationship, since it is the record label that is responsible for securing the license.

Second, section 115(d)(4)(A)(ii)(II) conspicuously leaves out any mention of "individual download licenses," even as it otherwise requires usage reporting for musical works used under such licenses. *See* 17 USC 115(d)(4)(A)(ii) ("a digital music provider shall provide . . . usage data for musical works used in covered activities under voluntary licenses and individual download licenses"). Instead, the provision draws a distinction between voluntary licenses *and the blanket license*. This strongly indicates that Congress was intending to refer in this provision to a narrower

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[21] *See* Recording Industry Association of America, *U.S. Sales Database*, at https://www.riaa.com/u-s-sales-database/.

[22] 17 U.S.C. § 115(e)(12) (definition of individual download license).

[23] 17 U.S.C. § 115(d)(1)(C).

set of voluntary licenses—those that are used in place of the blanket license, not in place of individual download licenses.

Third, any requirement to report musical work copyright owner contact information for all permanent downloads would run headlong into provisions making clear that it would be inappropriate to require a digital music provider to provide data that was unavailable. Specifically, in the provision defining the conditions of default for the blanket license, Congress specified that a licensee can be in default if it provides "1 or more monthly reports of usage . . . that, on the whole, is or are materially deficient as a result of inaccurate, missing, or unreadable data" only "*where the correct data was available to the digital music provider* and required to be reported under this section and applicable regulation." 17 USC 115(d)(4)(E) (emphasis added). As explained, record labels have never made musical work owner contact information available to download stores.

Finally, an interpretation requiring DMPs operating under pass-through download licenses to report the underlying owner of the relevant rights would undermine the viability of the pass-through licensing system, contrary to Congress's unambiguously expressed intent.

The above statutory cues are at least sufficient to render the statute ambiguous regarding the question at hand. It would therefore be appropriate for the Office to exercise its general regulatory authority to clarify this issue. Attached to this letter, DLC has provided recommended regulatory amendments to the interim reporting rules.[24]

Thank you for your time and continued engagement on these matters.

Best regards,

Sarang V. Damle

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[24] Consistent with our conversation with the Office, those regulations acknowledge one hypothetical scenario where the MLC would need to know what works are licensed under pass-through licenses: where a service is operating both under pass-through licenses for some downloads and under the blanket license for other downloads. Even in that scenario, however, the MLC does not need to know the identity of musical work copyright owners for downloads made and distributed pursuant to pass-through licenses—it only needs to know what *tracks* are covered by pass-through licenses and which are not. But we emphasize that is a purely hypothetical scenario at this point. As far as DLC is aware, all download stores operate exclusively under pass-through licenses from labels.

LATHAM & WATKINS LLP

Attendees at 11/6 Copyright Office Ex Parte Meeting

Digital Licensee Coordinator, Inc.

Lauren Danzy
Kevin Goldberg
Garrett Levin (as DLC Board Member)

Latham & Watkins (counsel to DLC, Inc.)

Sarang Damle
Allison L. Stillman

Amazon

Jon Cohen
James Duffett-Smith
Alan Jennings

Apple

Chris Bly
Elizabeth Miles
Nick Williamson

Google

Shane Liu
Jen Rosen
Sarah Rosenbaum

iHeart Media

Tony Pasigan

MediaNet

Seth Goldstein

Napster

Matt Eccles

Pandora

Tsholo Moraba
David Ring
Alex Winck

Qobuz

Daniel Findikian
Dan Mackta

Soundcloud

Daniel Susla

Spotify

Sara Domeier
Lisa Selden

Tidal

Justin Joel
Cassandra Ching

U.S. Copyright Office

Regan Smith
Anna Chauvet
Jason Sloan
John Riley
Cassie Sciortino

DLC Proposed Amendments to Interim Reporting Regulations
To Address Pass-Through Licensing

§210.24 Notices of blanket license.

(a) General. This section prescribes rules under which a digital music provider completes and submits a notice of license to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(2)(A) for purposes of obtaining a statutory blanket license.

(b) Form and content. A notice of license shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the digital music provider is engaging, or seeks to engage, in any covered activity.

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

(3) A telephone number and email address for the digital music provider where an individual responsible for managing the blanket license can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the digital music provider's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the digital music provider's eligibility for a blanket license and to provide reasonable notice to the mechanical licensing collective, copyright owners, and songwriters of the manner in which the digital music provider is engaging, or seeks to engage, in any covered activity pursuant to the blanket license. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the digital music provider has a good-faith belief, informed by review of relevant law and regulations, that it:

(A) Satisfies all requirements to be eligible for a blanket license, including that it satisfies the eligibility criteria to be considered a digital music provider pursuant to 17 U.S.C. 115(e)(8); and

(B) Is, or will be before the date of initial use of musical works pursuant to the blanket license, able to comply with all payments, terms, and responsibilities associated with the blanket license.

(ii) A statement that where the digital music provider seeks or expects to engage in any activity identified in its notice of license, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the digital music provider's service(s), or expected service(s), and the manner in which it uses, or seeks to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the digital music provider is, or seeks to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the digital music provider offers, or seeks to offer, as part of its covered activities (the digital music provider may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Services available through discounted pricing plans, such as for families or students.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the digital music provider wishes to provide.

(6) The date, or expected date, of initial use of musical works pursuant to the blanket license.

(7) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(8) A description of any applicable voluntary license **between the digital music provider and musical work copyright owner (or such owner's representative) that ~~or individual download license~~** the digital music provider is, or expects to be, operating under concurrently with the blanket license that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). **For avoidance of doubt, this paragraph (8) does not apply to authority obtained from a licensor of sound recordings to make and distribute permanent downloads of a musical work pursuant to an individual download license or similar voluntary license held by such licensor.** This description should be provided as an addendum to the rest of the notice of license to help preserve any confidentiality to which it may be entitled. With respect to any applicable voluntary license **~~or individual download license~~** executed and in effect before March 31, 2021, the description required by this paragraph (b)(8) must be delivered to the mechanical licensing collective either no later than 10 business days after such license is executed, or at least 90 calendar days before delivering a

report of usage covering the first reporting period during which such license is in effect, whichever is later. For any reporting period ending on or before March 31, 2021, the mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license ~~**or individual download license**~~ for which the collective has not received the description required by this paragraph (b)(8) at least 90 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods. The rest of the notice of license may be delivered separately from such description. The description required by this paragraph (b)(8) shall be sufficient if it includes at least the following information:

(i) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, through which musical works are, or are expected to be, used pursuant to any such voluntary license ~~**or individual download license**~~. If such a license pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(ii) The start and end dates.

(iii) The musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for the musical work copyright owner or for an administrator or other representative who has entered into an applicable license on behalf of the relevant copyright owner.

(iv) A satisfactory identification of any applicable catalog exclusions.

(v) At the digital music provider's option, and in lieu of providing the information listed in (iv) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(vi) A unique identifier for each such license.

(9) Acknowledgement of whether the digital music provider is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works (whether pursuant to an individual download license or a similar voluntary license held by such licensors), and whether such licenses or authority will be used for all permanent downloads made available on the applicable service(s).

(c) Certification and signature. The notice of license shall be signed by an appropriate duly authorized officer or representative of the digital music provider. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of license to the mechanical licensing collective on behalf of the digital music provider and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) Submission, fees, and acceptance. Except as provided by 17 U.S.C. 115(d)(9)(A), to obtain a blanket license, a digital music provider must submit a notice of license to the mechanical

licensing collective. Notices of license shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of license. Upon submitting a notice of license to the mechanical licensing collective, a digital music provider shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt. The mechanical licensing collective shall send any rejection of a notice of license to both the street address and email address provided in the notice.

(e) Harmless errors. Errors in the submission or content of a notice of license, including the failure to timely submit an amended notice of license, that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective to reject a notice or terminate a blanket license. This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) Amendments. A digital music provider may submit an amended notice of license to cure any deficiency in a rejected notice pursuant to 17 U.S.C. 115(d)(2)(A). A digital music provider operating under a blanket license must submit a new notice of license within 45 calendar days after any of the information required by paragraphs (b)(1) through (6) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of license submitted by a digital music provider. Where the information required by paragraph (b)(8) of this section has changed, instead of submitting an amended notice of license, the digital music provider must promptly deliver updated information to the mechanical licensing collective in an alternative manner reasonably determined by the collective. To the extent commercially reasonable, the digital music provider must deliver such updated information either no later than 10 business days after such license is executed, or at least 30 calendar days before delivering a report of usage covering the first reporting period during which such license is in effect, whichever is later. Except as otherwise provided for by paragraph (b)(8) of this section, the mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license ~~**or individual download license**~~ for which the collective has not received the description required by paragraph (b)(8) of this section at least 30 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods.

(g) Transition to blanket licenses. Where a digital music provider obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and seeks to continue operating under the blanket license, a notice of license must be submitted to the mechanical licensing collective within 45 calendar days after the license availability date and the mechanical licensing collective shall begin accepting such notices at least 30 calendar days before the license availability date, provided, however, that any description required by paragraph (b)(8) of this section must be delivered within the time period described in paragraph (b)(8). In such cases, the blanket license shall be effective as of the license availability date, rather than the date on which the notice is

submitted to the collective. Failure to comply with this paragraph (g), including by failing to timely submit the required notice or cure a rejected notice, shall not affect an applicable digital music provider's blanket license, except that such blanket license may become subject to default and termination under 17 U.S.C. 115(d)(4)(E). The mechanical licensing collective shall not take any action pursuant to 17 U.S.C. 115(d)(4)(E) before the conclusion of any proceedings under 17 U.S.C. 115(d)(2)(A)(iv) or (v), provided that the digital music provider meets the blanket license's other required terms and conditions.

(h) Additional information. Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a digital music provider that is not required by this section, which the digital music provider may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) Public access. The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all blanket licenses that, subject to any confidentiality to which they may be entitled, includes:

(1) All information contained in each notice of license, including amended and rejected notices;

(2) Contact information for all blanket licensees;

(3) The effective dates of all blanket licenses;

(4) For any amended or rejected notice, a clear indication of its amended or rejected status and its relationship to other relevant notices;

(5) For any rejected notice, the collective's reason(s) for rejecting it; and

(6) For any terminated blanket license, a clear indication of its terminated status, the date of termination, and the collective's reason(s) for terminating it.

§210.25 Notices of nonblanket activity.

(a) General. This section prescribes rules under which a significant nonblanket licensee completes and submits a notice of nonblanket activity to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(b) Form and content. A notice of nonblanket activity shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity.

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

(3) A telephone number and email address for the significant nonblanket licensee where an individual responsible for managing licenses associated with covered activities can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the significant nonblanket licensee's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the licensee's qualifications as a significant nonblanket licensee and to provide reasonable notice to the mechanical licensing collective, digital licensee coordinator, copyright owners, and songwriters of the manner in which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the significant nonblanket licensee has a good-faith belief, informed by review of relevant law and regulations, that it satisfies all requirements to qualify as a significant nonblanket licensee under 17 U.S.C. 115(e)(31).

(ii) A statement that where the significant nonblanket licensee expects to engage in any activity identified in its notice of nonblanket activity, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the significant nonblanket licensee's service(s), or expected service(s), and the manner in which it uses, or expects to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the significant nonblanket licensee is, or expects to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the significant nonblanket licensee offers, or expects to offer, as part of its covered activities (the significant nonblanket licensee may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Services available through discounted pricing plans, such as for families or students.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the significant nonblanket licensee wishes to provide.

(6) Acknowledgement of whether the significant nonblanket licensee is operating under **authority obtained from a licensor of sound recordings to make and distribute permanent downloads of a musical work (whether pursuant to an individual download license or a similar voluntary license held by such licensor)**~~one or more individual download licenses~~.

(7) The date of initial use of musical works pursuant to any covered activity.

(8) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(c) Certification and signature. The notice of nonblanket activity shall be signed by an appropriate duly authorized officer or representative of the significant nonblanket licensee. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of nonblanket activity to the mechanical licensing collective on behalf of the significant nonblanket licensee and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) Submission, fees, and acceptance. Notices of nonblanket activity shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of nonblanket activity. Upon submitting a notice of nonblanket

activity to the mechanical licensing collective, a significant nonblanket licensee shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt.

(e) Harmless errors. Errors in the submission or content of a notice of nonblanket activity, including the failure to timely submit an amended notice of nonblanket activity, that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) Amendments. A significant nonblanket licensee must submit a new notice of nonblanket activity with its report of usage that is next due after any of the information required by paragraphs (b)(1) through (7) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of nonblanket activity submitted by a significant nonblanket licensee.

(g) Transition to blanket licenses. Where a digital music provider that would otherwise qualify as a significant nonblanket licensee obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and does not seek to operate under the blanket license, if such licensee submits a valid notice of nonblanket activity within 45 calendar days after the license availability date in accordance with 17 U.S.C. 115(d)(6)(A)(i), such licensee shall not be considered to have ever operated under the statutory blanket license until such time as the licensee submits a valid notice of license pursuant to 17 U.S.C. 115(d)(2)(A).

(h) Additional information. Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a significant nonblanket licensee that is not required by this section, which the significant nonblanket licensee may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) Public access. The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all significant nonblanket licensees that, subject to any confidentiality to which they may be entitled, includes:

(1) All information contained in each notice of nonblanket activity, including amended notices;

(2) Contact information for all significant nonblanket licensees;

(3) The date of receipt of each notice of nonblanket activity; and

(4) For any amended notice, a clear indication of its amended status and its relationship to other relevant notices.

§210.27 Reports of usage and payment for blanket licensees.

(a) General. This section prescribes rules for the preparation and delivery of reports of usage and payment of royalties for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a digital music provider operating under a blanket license pursuant to 17 U.S.C. 115(d). A blanket licensee shall report and pay royalties to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(c)(2)(I), 17 U.S.C. 115(d)(4)(A), and this section. A blanket licensee shall also report to the mechanical licensing collective on an annual basis in accordance with 17 U.S.C. 115(c)(2)(I) and this section. A blanket licensee may make adjustments to its reports of usage and royalty payments in accordance with this section.

(b) Definitions. For purposes of this section, in addition to those terms defined in §210.22:

(1) The term report of usage, unless otherwise specified, refers to all reports of usage required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by significant nonblanket licensees under 17 U.S.C. 115(d)(6)(A)(ii) and §210.28.

(2) A monthly report of usage is a report of usage accompanying monthly royalty payments identified in 17 U.S.C. 115(c)(2)(I) and 17 U.S.C. 115(d)(4)(A), and required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license.

(3) An annual report of usage is a statement of account identified in 17 U.S.C. 115(c)(2)(I), and required to be delivered by a blanket licensee annually to the mechanical licensing collective under the blanket license.

(4) A report of adjustment is a report delivered by a blanket licensee to the mechanical licensing collective under the blanket license adjusting one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments.

(c) Content of monthly reports of usage. A monthly report of usage shall be clearly and prominently identified as a "Monthly Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

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

(4) For each sound recording embodying a musical work that is used by the blanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) **(i)** For any voluntary license **between a digital music provider and musical work copyright owner (or such owner's representative) that is ~~or individual download license~~** in effect during the applicable monthly reporting period, the information required under §210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. **For avoidance of doubt, this provision does not encompass the authority obtained by the digital music provider from a licensor of sound recordings to make and distribute permanent downloads of a musical work pursuant to an individual download license or similar voluntary license held by such licensors.**

(ii) For authority obtained from licensors of sound recordings to make and distribute permanent downloads of a musical work pursuant to an individual download license or similar voluntary license held by such sound recording licensors, provide a satisfactory identification of the sound recordings covered by such authority. If such authority is used for all permanent downloads made available for the applicable service, the digital music provider may so indicate. For avoidance of doubt, contact information for the musical work copyright owner need not be provided.

(6) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section:

(i) The total royalty payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total royalty payable broken down by each applicable activity or offering including as may be defined in part 385 of this title; and

(ii) The amount of late fees, if applicable, included in the payment associated with the monthly report of usage.

(d) Royalty payment and accounting information. The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) Calculations. (i) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license under

applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(ii) Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of such royalties under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(2) Estimates. (i) Where computation of the royalties payable by the blanket licensee under the blanket license depends on an input that is unable to be finally determined at the time the report of usage is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the blanket licensee's control (e.g., as applicable, the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the blanket licensee. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. A report of usage containing an estimate permitted by this paragraph (d)(2)(i) should identify each input that has been estimated, and provide the reason(s) why such input(s) needed to be estimated and an explanation as to the basis for the estimate(s).

(ii) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, and the blanket licensee is dependent upon the mechanical licensing collective to confirm usage subject to applicable voluntary licenses and individual download licenses, the blanket licensee shall compute the royalties payable by the blanket licensee under the blanket license using a reasonable estimation of the amount of payment for such non-blanket usage to be deducted from royalties that would otherwise be due under the blanket license, determined in accordance with GAAP. Royalty payments based on such estimates shall be adjusted within 5 calendar days after the mechanical licensing collective confirms such amount to be deducted and notifies the blanket licensee under paragraph (g)(2) of this section. Any overpayment of royalties shall be handled in accordance with paragraph (k)(5) of this section. Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the blanket licensee shall not provide an estimate of or deduct such amount in the information delivered to the mechanical licensing collective under paragraph (d)(1)(ii) of this section.

(3) Good faith. All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the blanket licensee at the time the report of usage is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e) Sound recording and musical work information. (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the blanket licensee, including unique identifier(s) (such as, if applicable, Uniform Resource Locators (URLs)) that can be used to locate and listen to the sound recording, accompanied by clear instructions describing how to do so (such audio access may be limited to a preview or sample of the sound recording lasting at least 30 seconds), subject to paragraph (e)(3) of this section;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(1) Sound recording copyright owner(s);

(2) Producer(s);

(3) ISRC(s);

(4) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(i) Catalog number(s);

(ii) UPC(s); and

(iii) Unique identifier(s) assigned by any distributor;

(5) Version(s);

(6) Release date(s);

(7) Album title(s);

(8) Label name(s);

(9) Distributor(s); and

(10) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the blanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B):

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(1) Songwriter(s);

(2) Publisher(s) with applicable U.S. rights;

(3) Musical work copyright owner(s);

(4) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(5) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the blanket licensee, or any corporate parent, subsidiary, or affiliate of the blanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Where any of the information called for by paragraph (e)(1) of this section, except for playing time, is acquired by the blanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the blanket licensee revises, re-titles, or otherwise modifies such information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), the blanket licensee shall report as follows:

(i) It shall be sufficient for the blanket licensee to report either the licensor-provided version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, except for the reporting of any information belonging to a category of information that was not periodically modified by that blanket licensee prior to the license availability date, any unique identifier (including but not limited to ISRC and ISWC), or any release date. On and after

September 17, 2021, it additionally shall not be sufficient for the blanket licensee to report a modified version of any sound recording name, featured artist, version, or album title.

(ii) Where the blanket licensee must otherwise report the licensor-provided version of such information under paragraph (e)(2)(i) of this section, but to the best of its knowledge, information, and belief no longer has possession, custody, or control of the licensor-provided version, reporting the modified version of such information will satisfy its obligations under paragraph (e)(1) of this section if the blanket licensee certifies to the mechanical licensing collective that to the best of the blanket licensee's knowledge, information, and belief: The information at issue belongs to a category of information called for by paragraph (e)(1) of this section (each of which must be identified) that was periodically modified by the particular blanket licensee prior to October 19, 2020; and that despite engaging in good-faith, commercially reasonable efforts, the blanket licensee has not located the licensor-provided version in its records. A certification need not identify specific sound recordings or musical works, and a single certification may encompass all licensor-provided information satisfying the conditions of the preceding sentence. The blanket licensee should deliver this certification prior to or contemporaneously with the first-delivered report of usage containing information to which this paragraph (e)(2)(ii) is applicable and need not provide the same certification to the mechanical licensing collective more than once.

(3) With respect to the obligation under paragraph (e)(1) of this section for blanket licensees to report unique identifiers that can be used to locate and listen to sound recordings accompanied by clear instructions describing how to do so:

(i) On and after the license availability date, blanket licensees providing such unique identifiers may not impose conditions that materially diminish the degree of access to sound recordings in connection with their potential use by the mechanical licensing collective or its registered users in connection with their use of the collective's claiming portal (e.g., if a paid subscription is not required to listen to a sound recording as of the license availability date, the blanket licensee should not later impose a subscription fee for users to access the recording through the portal). Nothing in this paragraph (e)(3)(i) shall be construed as restricting a blanket licensee from otherwise imposing conditions or diminishing access to sound recordings: With respect to other users or methods of access to its service(s), including the general public; if required by a relevant agreement with a sound recording copyright owner or other licensor of sound recordings; or where such sound recordings are no longer made available through its service(s).

(ii) Blanket licensees who do not assign such unique identifiers as of September 17, 2020, may make use of a transition period ending September 17, 2021, during which the requirement to report such unique identifiers accompanied by instructions shall be waived upon notification, including a description of any implementation obstacles, to the mechanical licensing collective.

(iii)(A) By no later than December 16, 2020, and on a quarterly basis for the succeeding year, or as otherwise directed by the Copyright Office, the mechanical licensing collective and digital licensee coordinator shall report to the Copyright Office regarding the ability of users to listen to sound recordings for identification purposes through the collective's claiming portal. In addition to any other information requested, each report shall:

(1) Identify any implementation obstacles preventing the audio of any reported sound recording from being accessed directly or indirectly through the portal without cost to portal users (including any obstacles described by any blanket licensee pursuant to paragraph (e)(3)(ii) of this section, along with such licensee's identity), and any other obstacles to improving the experience of portal users seeking to identify musical works and their owners;

(2) Identify an implementation strategy for addressing any identified obstacles, and, as applicable, what progress has been made in addressing such obstacles; and

(3) Identify any agreements between the mechanical licensing collective and blanket licensee(s) to provide for access to the relevant sound recordings for portal users seeking to identify musical works and their owners through an alternate method rather than by reporting unique identifiers through reports of usage (e.g., separately licensed solutions). If such an alternate method is implemented pursuant to any such agreement, the requirement to report unique identifiers that can be used to locate and listen to sound recordings accompanied by clear instructions describing how to do so is lifted for the relevant blanket licensee(s) for the duration of the agreement.

(B) The mechanical licensing collective and digital licensee coordinator shall cooperate in good faith to produce the reports required under paragraph (e)(3)(iii)(A) of this section, and shall submit joint reports with respect to areas on which they can reach substantial agreement, but which may contain separate report sections on areas where they are unable to reach substantial agreement. Such cooperation may include work through the operations advisory committee.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the blanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a blanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.

(5) A blanket licensee may make use of a transition period ending September 17, 2021, during which the blanket licensee need not report information that would otherwise be required by paragraph (e)(1)(i)(E) or (e)(1)(ii) of this section, unless:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) It belongs to a category of information that is reported by the particular blanket licensee pursuant to any voluntary license or individual download license; or

(iii) It belongs to a category of information that was periodically reported by the particular blanket licensee prior to the license availability date.

(f) Content of annual reports of usage. An annual report of usage, covering the full fiscal year of the blanket licensee, shall be clearly and prominently identified as an “Annual Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,” and shall include a clear statement of the following information:

(1) The fiscal year covered by the annual report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

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

(4) The following information, cumulative for the applicable annual reporting period, for each month for each applicable activity or offering including as may be defined in part 385 of this title, and broken down by month and by each such applicable activity or offering:

(i) The total royalty payable by the blanket licensee under the blanket license, computed in accordance with the requirements of this section and part 385 of this title.

(ii) The total sum paid to the mechanical licensing collective under the blanket license, including the amount of any adjustment delivered contemporaneously with the annual report of usage.

(iii) The total adjustment(s) made by any report of adjustment adjusting any monthly report of usage covered by the applicable annual reporting period, including any adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section.

(iv) The total number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each sound recording used, whether pursuant to a blanket license, voluntary license, or individual download license.

(v) To the extent applicable to the calculation of royalties owed by the blanket licensee under the blanket license:

(A) Total service provider revenue, as may be defined in part 385 of this title.

(B) Total costs of content, as may be defined in part 385 of this title.

(C) Total deductions of performance royalties, as may be defined in and permitted by part 385 of this title.

(D) Total subscribers, as may be defined in part 385 of this title.

(5) The amount of late fees, if applicable, included in any payment associated with the annual report of usage.

(g) Processing and timing. (1) Each monthly report of usage and related royalty payment must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period. Where a monthly report of usage satisfying the requirements of 17 U.S.C. 115 and this section is delivered to the mechanical licensing collective

no later than 15 calendar days after the end of the applicable monthly reporting period, the mechanical licensing collective shall deliver an invoice to the blanket licensee no later than 40 calendar days after the end of the applicable monthly reporting period that sets forth the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, which shall be broken down by each applicable activity or offering including as may be defined in part 385 of this title.

(2) After receiving a monthly report of usage, the mechanical licensing collective shall engage in the following actions, among any other actions required of it:

(i) The mechanical licensing collective shall engage in efforts to identify the musical works embodied in sound recordings reflected in such report, and the copyright owners of such musical works (and shares thereof).

(ii) The mechanical licensing collective shall engage in efforts to confirm uses of musical works subject to voluntary licenses and individual download licenses, and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license.

(iii) Where the blanket licensee will not receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to confirm proper payment of the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(iv) Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(v) The mechanical licensing collective shall deliver a response file to the blanket licensee if requested by the blanket licensee, and the blanket licensee may request an invoice even if not entitled to an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section. Such requests may be made in connection with a particular monthly report of usage or via a one-time request that applies to future reporting periods. Where the blanket licensee will receive an invoice prior to delivering its royalty payment under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file to the blanket licensee contemporaneously with such invoice. The mechanical licensing collective shall otherwise deliver the response file and/or invoice, as applicable, to the blanket licensee in a reasonably timely manner, but no later than 70 calendar days after the end of the applicable monthly reporting period if the blanket licensee has delivered its monthly report of usage and related royalty payment no later than 45 calendar days after the end of the applicable monthly reporting period. In all cases, the response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital

music providers by applicable third-party administrators, and shall include the results of the process described in paragraphs (g)(2)(i) through (iv) of this section on a track-by-track and ownership-share basis, with updates to reflect any new results from the previous month. Response files shall include the following minimum information: song title, mechanical licensing collective-assigned song code, composer(s), publisher name, including top publisher, original publisher, and admin publisher, publisher split, mechanical licensing collective-assigned publisher number, publisher/license status (whether each work share is subject to the blanket license or a voluntary license or individual download license), royalties per work share, effective per-play rate, time-adjusted plays, and the unique identifier for each applicable voluntary license or individual download license provided to the mechanical licensing collective pursuant to §210.24(b)(8)(vi).

(3) Each annual report of usage and, if any, related royalty payment must be delivered to the mechanical licensing collective no later than the 20th day of the sixth month following the end of the fiscal year covered by the annual report of usage.

(4) The required timing for any report of adjustment and, if any, related royalty payment shall be as follows:

(i) Where a report of adjustment adjusting a monthly report of usage is not combined with an annual report of usage, as described in paragraph (k)(1) of this section, a report of adjustment adjusting a monthly report of usage must be delivered to the mechanical licensing collective after delivery of the monthly report of usage being adjusted and before delivery of the annual report of usage for the annual period covering such monthly report of usage.

(ii) A report of adjustment adjusting an annual report of usage must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same annual report of usage at different points in time, a separate 6-month period runs for each such triggering event.

(h) Format and delivery. (1) Reports of usage shall be delivered to the mechanical licensing collective in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among blanket licensees. The mechanical licensing collective must offer at least two options, where one is dedicated to smaller blanket licensees that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger blanket licensees with more sophisticated operations. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than two reporting or data standards or formats.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A report of usage and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably

sufficient to allow the mechanical licensing collective to match the report of usage to the payment.

(3) The mechanical licensing collective may modify the requirements it adopts under paragraphs (h)(1) and (2) of this section at any time, after good-faith consultation with the operations advisory committee and taking into consideration any technological and cost burdens that may reasonably be expected to result and the proportionality of those burdens to any reasonably expected benefits, provided that advance notice of any such change is reflected on its website and delivered to blanket licensees using the contact information provided in each respective licensee's notice of license. A blanket licensee shall not be required to comply with any such change before the first reporting period ending at least 30 calendar days after delivery of such notice, unless such change is a significant change, in which case, compliance shall not be required before the first reporting period ending at least one year after delivery of such notice. For purposes of this paragraph (h)(3), a significant change occurs where the mechanical licensing collective changes any policy requiring information to be provided under particular reporting or data standards or formats. Where delivery of the notice required by this paragraph (h)(3) is attempted but unsuccessful because the contact information in the blanket licensee's notice of license is not current, the grace periods established by this paragraph (h)(3) shall begin to run from the date of attempted delivery. Nothing in this paragraph (h)(3) empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(4) The mechanical licensing collective shall, by no later than the license availability date, establish an appropriate process by which any blanket licensee may voluntarily make advance deposits of funds with the mechanical licensing collective against which future royalty payments may be charged.

(5) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities. An annual report of usage shall be delivered for each fiscal year during which at least one monthly report of usage was required to have been delivered. An annual report of usage does not replace any monthly report of usage.

(6)(i) Where a blanket licensee attempts to timely deliver a report of usage and/or related royalty payment to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the blanket licensee knew or should have known at the time, if the blanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at USCOGeneralCounsel@copyright.gov), and delivers the report of usage and/or related royalty payment to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then the mechanical licensing collective shall act as follows:

(A) The mechanical licensing collective shall fully credit the blanket licensee for any applicable late fee paid by the blanket licensee as a result of the untimely delivery of the report of usage and/or related royalty payment.

(B) The mechanical licensing collective shall not use the untimely delivery of the report of usage and/or related royalty payment as a basis to terminate the blanket licensee's blanket license.

(ii) In the event of a good-faith dispute regarding whether a blanket licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the mechanical licensing collective's applicable information technology systems, a blanket licensee that complies with the requirements of paragraph (h)(6)(i) of this section within a reasonable period of time shall receive the protections of paragraphs (h)(6)(i)(A) and (B) of this section.

(7) The mechanical licensing collective shall provide a blanket licensee with written confirmation of receipt no later than 2 business days after receiving a report of usage and no later than 2 business days after receiving any payment.

(i) Certification of monthly reports of usage. Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have examined this monthly report of usage, and (3) 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.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have prepared or supervised the preparation of the data used by the blanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the blanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a

licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that (A) the processes generated monthly reports of usage that accurately reflect, in all material respects, the blanket licensee's usage of musical works, the statutory royalties applicable thereto (to the extent reported), and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations, and (B) the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(6) A certification that the blanket licensee has, for the period covered by the monthly report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and §210.26.

(j) Certification of annual reports of usage. (1) Each annual report of usage shall be accompanied by:

(i) The name of the person who is signing the annual report of usage on behalf of the blanket licensee.

(ii) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature.

(iv) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person signing the annual report of usage.

(v) The following statement: I am duly authorized to sign this annual report of usage on behalf of the blanket licensee.

(vi) A certification that the blanket licensee has, for the period covered by the annual report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and §210.26.

(2) Each annual report of usage shall also be certified by a licensed certified public accountant. Such certification shall comply with the following requirements:

(i) Except as provided in paragraph (j)(2)(ii) of this section, the accountant shall certify that it has conducted an examination of the annual report of usage prepared by the blanket licensee in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and has rendered an opinion based on such examination that the annual report of usage conforms with the standards in paragraph (j)(2)(iv) of this section.

(ii) If such accountant determines in its professional judgment that the volume of data attributable to a particular blanket licensee renders it impracticable to certify the annual report of usage as required by paragraph (j)(2)(i) of this section, the accountant may instead certify the following:

(A) That the accountant has conducted an examination in accordance with the attestation standards established by the American Institute of Certified Public Accountants of the following assertions by the blanket licensee's management:

(1) That the processes used by or on behalf of the blanket licensee generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section; and

(2) That the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(B) That such examination included examining, either on a test basis or otherwise as the accountant considered necessary under the circumstances and in its professional judgment, evidence supporting the management assertions in paragraph (j)(2)(ii)(A) of this section, and performing such other procedures as the accountant considered necessary in the circumstances.

(C) That the accountant has rendered an opinion based on such examination that the processes used to generate the annual report of usage generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section, and that the internal controls relevant to the processes used to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(iii) In the event a third party or third parties acting on behalf of the blanket licensee provided services related to the annual report of usage, the accountant making a certification under either paragraph (j)(2)(i) or (ii) of this section may, as the accountant considers necessary under the circumstances and in its professional judgment, rely on a report and opinion rendered by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants that the processes and/or internal controls of the third party or third parties relevant to the generation of the blanket licensee's annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage, if such reliance is disclosed in the certification.

(iv) An annual report of usage conforms with the standards of this paragraph (j) if it presents fairly, in all material respects, the blanket licensee's usage of musical works in covered activities during the period covered by the annual report of usage, the statutory royalties applicable thereto (to the extent reported), and such other data as are relevant to the calculation of statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(v) Each 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.

(3) If the annual report of usage is delivered electronically, the blanket licensee may deliver an electronic facsimile of the original certification of the annual report of usage signed by the licensed certified public accountant. The blanket licensee shall retain the original certification of the annual report of usage signed by the licensed certified public accountant for the period

identified in paragraph (m) of this section, which shall be made available to the mechanical licensing collective upon demand.

(k) Adjustments. (1) A blanket licensee may adjust one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, by delivering to the mechanical licensing collective a report of adjustment. A report of adjustment adjusting one or more monthly reports of usage may, but need not, be combined with the annual report of usage for the annual period covering such monthly reports of usage and related payments. In such cases, such an annual report of usage shall also be considered a report of adjustment, and must satisfy the requirements of both paragraphs (f) and (k) of this section.

(2) A report of adjustment, except when combined with an annual report of usage, shall be clearly and prominently identified as a "Report of Adjustment Under Compulsory Blanket License for Making and Distributing Phonorecords." A report of adjustment that is combined with an annual report of usage shall be identified in the same manner as any other annual report of usage.

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly reports of usage or annual reports of usage, including a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the blanket licensee under the blanket license depends. Such description shall include all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the adjusted royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of the adjustment under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2)(i) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the blanket licensee shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the report of adjustment or promptly after being notified by the mechanical licensing collective of the amount due. A report of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the blanket licensee's account, or upon request, issue a refund within a reasonable period of time.

(6) A report of adjustment adjusting an annual report of usage may only be made:

(i) In exceptional circumstances;

(ii) When making an adjustment to a previously estimated input under paragraph (d)(2)(i) of this section;

(iii) Following an audit under 17 U.S.C. 115(d)(4)(D);

(iv) Following any other audit of a blanket licensee that concludes after the annual report of usage is delivered and that has the result of affecting the computation of the royalties payable by the blanket licensee under the blanket license (e.g., as applicable, an audit by a sound recording copyright owner concerning the amount of applicable consideration paid for sound recording copyright rights); or

(v) In response to a change in applicable rates or terms under part 385 of this title.

(7) A report of adjustment adjusting a monthly report of usage must be certified in the same manner as a monthly report of usage under paragraph (i) of this section. A report of adjustment adjusting an annual report of usage must be certified in the same manner as an annual report of usage under paragraph (j) of this section, except that the examination by a certified public accountant under paragraph (j)(2) of this section may be limited to the adjusted material and related recalculation of royalties payable. Where a report of adjustment is combined with an annual report of usage, its content shall be subject to the certification covering the annual report of usage with which it is combined.

(l) Clear statements. The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation of facts or information contained in other documents or records.

(m) Documentation and records of use. (1) Each blanket licensee shall, for a period of at least seven years from the date of delivery of a report of usage to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such report of usage (except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the report of usage containing the final adjustment of such input), including but not limited to the following:

(i) Records and documents accounting for digital phonorecord deliveries that do not constitute plays, constructive plays, or other payable units.

(ii) Records and documents pertaining to any promotional or free trial uses that are required to be maintained under applicable provisions of part 385 of this title.

(iii) Records and documents identifying or describing each of the blanket licensee's applicable activities or offerings including as may be defined in part 385 of this title, including information sufficient to reasonably demonstrate whether the activity or offering qualifies as any particular activity or offering for which specific rates and terms have been established in part 385 of this title, and which specific rates and terms apply to such activity or offering.

(iv) Records and documents with information sufficient to reasonably demonstrate, if applicable, whether service revenue and total cost of content, as those terms may be defined in part 385 of this title, are properly calculated in accordance with part 385 of this title.

(v) Records and documents with information sufficient to reasonably demonstrate whether and how any royalty floor established in part 385 of this title does or does not apply.

(vi) Records and documents containing such other information as is necessary to reasonably support and confirm all usage and calculations (including of any inputs provided to the mechanical licensing collective to enable further calculations) contained in the report of usage, including but not limited to, as applicable, relevant information concerning subscriptions, devices and platforms, discount plans (including how eligibility was assessed), bundled offerings (including their constituent components and pricing information), and numbers of end users and subscribers (including unadjusted numbers and numbers adjusted as may be permitted by part 385 of this title).

(vii) Any other records or documents that may be appropriately examined pursuant to an audit under 17 U.S.C. 115(d)(4)(D).

(2) The mechanical licensing collective or its agent shall be entitled to reasonable access to records and documents described in paragraph (m)(1) of this section, which shall be provided promptly and arranged for no later than 30 calendar days after the mechanical licensing collective's reasonable request, subject to any confidentiality to which they may be entitled. The mechanical licensing collective shall be entitled to make one request per quarter covering a period of up to one quarter in the aggregate. With respect to the total cost of content, as that term may be defined in part 385 of this title, the access permitted by this paragraph (m)(2) shall be limited to accessing the aggregated figure kept by the blanket licensee on its books for the relevant reporting period(s). Neither the mechanical licensing collective nor its agent shall be entitled to access any records or documents retained solely pursuant to paragraph (m)(1)(vii) of this section outside of an applicable audit. Each report of usage must include clear instructions on how to request access to records and documents under this paragraph (m).

(3) Each blanket licensee shall, in accordance with paragraph (m)(4) of this section, keep and retain in its possession and report the following information:

(i) With respect to each sound recording, that embodies a musical work, first licensed or obtained for use in covered activities by the blanket licensee on or after the effective date of its blanket license:

(A) Each of the following dates to the extent reasonably available:

(1) The date on which the sound recording was first reproduced by the blanket licensee on its server (“server fixation date”).

(2) The date on which the sound recording was first released on the blanket licensee's service (“street date”).

(B) If neither of the dates specified in paragraph (m)(3)(i)(A) of this section is reasonably available, the date that, in the assessment of the blanket licensee, provides a reasonable estimate of the date the sound recording was first distributed on its service within the United States (“estimated first distribution date”).

(ii) A record of materially all sound recordings embodying musical works in its database or similar electronic system as of a time reasonably approximate to the effective date of its blanket license. For each recording, the record shall include the sound recording name(s), featured artist(s), unique identifier(s) assigned by the blanket licensee, actual playing time, and, to the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, ISRC(s). The blanket licensee shall use commercially reasonable efforts to make this record as accurate and complete as reasonably possible in representing the blanket licensee's repertoire as of immediately prior to the effective date of its blanket license.

(4)(i) Each blanket licensee must deliver the information described in paragraph (m)(3)(i) of this section to the mechanical licensing collective at least annually and keep and retain this information until delivered. Such reporting must include the following:

(A) For each sound recording, the same categories of information described in paragraph (m)(3)(ii) of this section.

(B) For each date, an identification of which type of date it is (i.e., server fixation date, street date, or estimated first distribution date).

(ii) A blanket licensee must deliver the information described in paragraph (m)(3)(ii) of this section to the mechanical licensing collective as soon as commercially reasonable, and no later than contemporaneously with its first reporting under paragraph (m)(4)(i) of this section.

(iii) Prior to being delivered to the mechanical licensing collective, the collective or its agent shall be entitled to reasonable access to the information kept and retained pursuant to paragraphs (m)(4)(i) and (ii) of this section if needed in connection with applicable directions, instructions, or orders concerning the distribution of royalties.

(5) Nothing in paragraph (m)(3) or (4) of this section, nor the collection, maintenance, or delivery of information under paragraphs (m)(3) and (4) of this section, nor the information itself, shall be interpreted or construed:

(i) To alter, limit, or diminish in any way the ability of an author or any other person entitled to exercise rights of termination under section 203 or 304 of title 17 of the United States Code from fully exercising or benefiting from such rights;

(ii) As determinative of the date of the license grant with respect to works as it pertains to sections 203 and 304 of title 17 of the United States Code; or

(iii) To affect in any way the scope or effectiveness of the exercise of termination rights, including as pertaining to derivative works, under section 203 or 304 of title 17 of the United States Code.

(n) Voluntary agreements with mechanical licensing collective to alter process. (1) Subject to the provisions of 17 U.S.C. 115, a blanket licensee and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraphs (i) and (j) of this section may not be altered by agreement. This paragraph (n)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (n)(1) of this section that includes the name of the blanket licensee (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the blanket licensee engages in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (n)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

§210.28 Reports of usage for significant nonblanket licensees.

(a) General. This section prescribes rules for the preparation and delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a significant nonblanket licensee pursuant to 17 U.S.C. 115(d)(6)(A)(ii). A significant nonblanket licensee shall report to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(d)(6)(A)(ii) and this section. A significant nonblanket licensee may make adjustments to its reports of usage in accordance with this section.

(b) Definitions. For purposes of this section, in addition to those terms defined in §210.22:

(1) The term report of usage, unless otherwise specified, refers to all reports of usage required to be delivered by a significant nonblanket licensee to the mechanical licensing collective, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by blanket licensees under 17 U.S.C. 115(d)(4)(A) and §210.27.

(2) A monthly report of usage is a report of usage identified in 17 U.S.C. 115(d)(6)(A)(ii), and required to be delivered by a significant nonblanket licensee to the mechanical licensing collective.

(3) A report of adjustment is a report delivered by a significant nonblanket licensee to the mechanical licensing collective adjusting one or more previously delivered monthly reports of usage.

(c) Content of monthly reports of usage. A monthly report of usage shall be clearly and prominently identified as a "Significant Nonblanket Licensee Monthly Report of Usage for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities. If the significant nonblanket licensee has a unique DDEX identifier number, it must also be provided.

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

(4) For each sound recording embodying a musical work that is used by the significant nonblanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) **(i)** For each voluntary license ~~**and individual download license**~~ in effect during the applicable monthly reporting period, the information required under §210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(ii) For authority obtained from licensors of sound recordings to make and distribute permanent downloads of a musical work pursuant to an individual download license or similar voluntary license held by such sound recording licensors, a satisfactory identification of the sound recordings covered by such authority. If such licenses or authority are used for all permanent downloads made available on the applicable service, the digital music provider may so indicate. For avoidance of doubt, contact information for the musical work copyright owner need not be provided.

(d) Royalty payment and accounting information. The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) The mechanical royalties payable by the significant nonblanket licensee for the applicable monthly reporting period for engaging in covered activities pursuant to each applicable voluntary license and ~~**individual download license**~~ **authority obtained from a licensor of sound recordings to make and distribute permanent downloads of a musical work for permanent downloads**.

(2) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(e) Sound recording and musical work information. (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the significant nonblanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the significant nonblanket licensee's public-facing service;

(D) Actual playing time measured from the sound recording audio file; and

(E) To the extent acquired by the significant nonblanket licensee in connection with its use of sound recordings of musical works to engage in covered activities:

(1) Sound recording copyright owner(s);

(2) Producer(s);

(3) ISRC(s);

(4) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(i) Catalog number(s);

(ii) UPC(s); and

(iii) Unique identifier(s) assigned by any distributor;

(5) Version(s);

(6) Release date(s);

(7) Album title(s);

(8) Label name(s);

(9) Distributor(s); and

(10) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the significant nonblanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(1) Songwriter(s);

(2) Publisher(s) with applicable U.S. rights;

(3) Musical work copyright owner(s);

(4) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(5) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the significant nonblanket licensee, or any corporate parent, subsidiary, or affiliate of the significant nonblanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Where any of the information called for by paragraph (e)(1) of this section, except for playing time, is acquired by the significant nonblanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the significant nonblanket licensee revises, re-titles, or otherwise modifies such information (which, for avoidance of doubt, does not include the act of filling in or supplementing empty or blank data fields, to the extent such information is known to the licensee), the significant nonblanket licensee shall report as follows:

(i) It shall be sufficient for the significant nonblanket licensee to report either the licensor-provided version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, except that it shall not be sufficient for the significant nonblanket licensee to report a modified version of any information belonging to a category of information that was not periodically modified by that significant nonblanket licensee prior to the license availability date, any unique identifier (including but not limited to ISRC and ISWC), or any release date.

(ii) Where the significant nonblanket licensee must otherwise report the licensor-provided version of such information under paragraph (e)(2)(i) of this section, but to the best of its knowledge, information, and belief no longer has possession, custody, or control of the licensor-provided version, reporting the modified version of such information will satisfy its obligations under paragraph (e)(1) of this section if the significant nonblanket licensee certifies to the mechanical licensing collective that to the best of the significant nonblanket licensee's knowledge, information, and belief: The information at issue belongs to a category of information called for by paragraph (e)(1) of this section (each of which must be identified) that was periodically modified by the particular significant nonblanket licensee prior to October 19, 2020; and that despite engaging in good-faith, commercially reasonable efforts, the significant nonblanket licensee has not located the licensor-provided version in its records. A certification need not identify specific sound recordings or musical works, and a single certification may encompass all licensor-provided information satisfying the conditions of the preceding sentence. The significant nonblanket licensee should deliver this certification prior to or contemporaneously with the first-delivered report of usage containing information to which this paragraph (e)(2)(ii) is applicable and need not provide the same certification to the mechanical licensing collective more than once.

(3) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the significant nonblanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a significant nonblanket licensee acquires

this information in addition to other information identifying a relevant sound recording copyright owner, all such information should be reported.

(4) A significant nonblanket licensee may make use of a transition period ending September 17, 2021, during which the significant nonblanket licensee need not report information that would otherwise be required by paragraph (e)(1)(i)(E) or (e)(1)(ii) of this section, unless:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) It belongs to a category of information that is reported by the particular significant nonblanket licensee pursuant to any voluntary license or individual download license; or

(iii) It belongs to a category of information that was periodically reported by the particular significant nonblanket licensee prior to the license availability date.

(f) Timing. (1) An initial report of usage must be delivered to the mechanical licensing collective contemporaneously with the significant nonblanket licensee's notice of nonblanket activity. Each subsequent monthly report of usage must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period.

(2) A report of adjustment may only be delivered to the mechanical licensing collective once annually, between the end of the significant nonblanket licensee's fiscal year and 6 months after the end of its fiscal year. Such report may only adjust one or more previously delivered monthly reports of usage from the applicable fiscal year.

(g) Format and delivery. (1) Reports of usage shall be delivered to the mechanical licensing collective in any format accepted by the mechanical licensing collective for blanket licensees under §210.27(h). With respect to any modifications to formatting requirements that the mechanical licensing collective adopts, the mechanical licensing collective shall follow the consultation process as under §210.27(h), and significant nonblanket licensees shall be entitled to the same advance notice and grace periods as apply to blanket licensees under §210.27(h), except the mechanical licensing collective shall use the contact information provided in each respective significant nonblanket licensee's notice of nonblanket activity. Nothing in this paragraph (g)(1) empowers the mechanical licensing collective to impose reporting requirements that are otherwise inconsistent with the regulations prescribed by this section.

(2) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities.

(3) Where a significant nonblanket licensee attempts to timely deliver a report of usage to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control) the occurrence of which the significant nonblanket licensee knew or should have known at the time, if the significant nonblanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at

USCOGeneralCounsel@copyright.gov), and delivers the report of usage to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). In the event of a good-faith dispute regarding whether a significant nonblanket licensee knew or should have known of the occurrence of an error, outage, disruption, or other issue with any of the mechanical licensing collective's applicable information technology systems, neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C) as long as the significant nonblanket licensee complies with the requirements of this paragraph (g)(3) within a reasonable period of time.

(4) The mechanical licensing collective shall provide a significant nonblanket licensee with written confirmation of receipt no later than 2 business days after receiving a report of usage.

(h) Certification of monthly reports of usage. Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a significant nonblanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the significant nonblanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have examined this monthly report of usage, and (3) 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.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have prepared or supervised the preparation of the data used by the significant nonblanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the significant nonblanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified

Public Accountants, the opinion of whom was that (A) the processes generated monthly reports of usage that accurately reflect, in all material respects, the significant nonblanket licensee's usage of musical works and the royalties applicable thereto, and (B) the internal controls relevant to the processes used by or on behalf of the significant nonblanket licensee to generate monthly reports of usage were suitably designed and operated effectively during the period covered by the monthly reports of usage.

(i) Adjustments. (1) A significant nonblanket licensee may adjust one or more previously delivered monthly reports of usage by delivering to the mechanical licensing collective a report of adjustment.

(2) A report of adjustment shall be clearly and prominently identified as a “Significant Nonblanket Licensee Report of Adjustment for Making and Distributing Phonorecords.”

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly report(s) of usage to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly report(s) of usage.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) A report of adjustment must be certified in the same manner as a monthly report of usage under paragraph (h) of this section.

(j) Clear statements. The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation of facts or information contained in other documents or records.

(k) Harmless errors. Errors in the delivery or content of a report of usage that do not materially affect the adequacy of the information required to serve the purpose of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the report invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (k) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(l) Voluntary agreements with mechanical licensing collective to alter process. (1) Subject to the provisions of 17 U.S.C. 115, a significant nonblanket licensee and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraph (h) of this section may not be altered by agreement. This paragraph (l)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (l)(1) of this section that includes the name of the significant nonblanket licensee (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (l)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.