

Announcement

from the Copyright Office, Library of Congress, Washington, D.C. 20559

INTERIM REGULATIONS

COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

The following excerpt is taken from Volume 42, No. 250 of the Federal Register for Thursday, December 29, 1977 (pp. 64889-94).

[1410-03]

Title 37—Patents, Trademarks, and
Copyrights

CHAPTER II—COPYRIGHT OFFICE,
LIBRARY OF CONGRESS

[Docket RM 77-3]

PART 201—GENERAL PROVISIONS

Compulsory License For Making and
Distributing Phonorecords

AGENCY: Library of Congress, Copy-
right Office.

ACTION: Interim regulations.

SUMMARY: This notice is issued to ad-
vise the public that the Copyright Office

of the Library of Congress is adopting interim regulations to implement section 115 of the Act for General Revision of the Copyright Law. That section establishes a compulsory license for the making and distribution of phonorecords of nondramatic musical works. The effect of the interim regulations is to establish requirements governing the content and service of certain notices and statements of account to be filed by persons exercising the compulsory license.

The regulations are issued on an interim basis in order to allow persons to invoke the compulsory license on and after January 1, 1978, the effective date of the new law, while permitting full public comment before the issuance of final regulations.

DATES: The interim regulations are effective on January 1, 1978. Comments should be received on or before January 27, 1978; reply comments on or before February 10, 1978.

ADDRESSES: Five copies of all written comments should be provided, if by hand, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Crystal Mall Building No. 2, Room 519, Arlington, Virginia, or, if by mail, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Caller No. 299, Arlington, Virginia 22202. *

Copies of all written comments will be available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room 101, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Section 115 of the first section of Pub. L. 94-553 (90 Stat. 2541) provides that "[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work" for certain purposes.

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner if certain conditions are met and royalties paid.

Paragraph (b) (1) of section 115 provides that a condition of the compulsory license for making and distributing phonorecords is the service or filing of a notice of intention:

(b) *Notice of intention to obtain compulsory license.* (1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the

copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

Paragraph (c) of section 115 deals with the statutory royalties to be paid to copyright owners by persons exercising the compulsory license; it provides in relevant part:

(2) * * * the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

On April 26 and 27, 1977, in accordance with an Advance Notice of Proposed Rulemaking (42 FR 16837), we held a public hearing to elicit information relevant to the formulation of regulations under this section. The purpose of this Notice is to issue such regulations. As the new Copyright Act, and hence the availability of the compulsory license, goes into effect on January 1, 1978 we have decided to issue the regulations on an interim basis. This will permit parties who wish to invoke the compulsory license on or after the effective date of the statute to do so, while permitting full public comment on the regulations. Final regulations will be issued after the close of the comment period.

The interim regulations consist of essentially two parts: § 201.18 establishes interim requirements governing the content, filing, and service of notices of intention to obtain the compulsory license; and § 201.19 establishes interim rules governing the content and service of monthly and annual statements of account under the compulsory license.

The interim regulations are based on a thorough consideration of all testimony given at the April hearing and in supplemental statements filed by interested parties. For the most part they are self-explanatory; however, a few provisions deserve special note:

1. *Forms.* The interim regulations do not prescribe use of a standard form for notices of intention and monthly and annual statements of account. We are aware that, particularly with respect to annual statements of account, the use of

a prescribed form may be of assistance to record companies in understanding and meeting their obligations under the compulsory license, and to music copyright owners in reviewing the information reported. Accordingly, we plan to review the question of forms before issuing final regulations.

2. *Contents of Notice of Intention and Statements of Account.* Interim § 201.18 (c) adopts the view that the notice of intention should contain sufficient information to identify the person or entity intending to obtain the compulsory license and the phonorecords on which statutory royalties will be paid. To a great extent, the information required by this section meets the recommendations advanced by representatives of both record companies and music copyright owners in their supplemental comments following the April hearing. One particular area of disagreement related to whether the notice of intention should give the name and address of the phonorecord manufacturing facility employed by the person or entity exercising the compulsory license. We believe that to require such information would go beyond the purpose the notice is to serve. This conclusion is in no manner intended to detract from the liability of record pressers and other manufacturers and makers of phonorecords where the compulsory license requirements have not been met. Cf. S. Rep. 94-1473, 94th Cong., 1st Sess., Nov. 20, 1975 at 91; H.R. Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 110.

Interim § 201.19 reflects our view that monthly statements of account should provide basic information regarding the statutory royalties to be paid for that month and certain information pertinent to annual reconciliation of the monthly statements, while annual statements of account should be considerably more detailed and sufficient to ensure that statutory royalties have been paid on all phonorecords made and permanently distributed during the year.

Section 115(c) (4) of the Act provides that "if the copyright owner does not receive the monthly payment * * * when due, the owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of notice, the compulsory license will be automatically terminated." That paragraph also provides that termination renders the making, distribution, or both, of phonorecords for which the royalty has not been paid fully actionable as acts of infringement. Accordingly, although interim § 201.19 (c) (6) (ii) accepts the possibility that full annual royalties may not be reconciled until the end of the accounting year and requires additional payments at that time, it also provides that "the delivery of such sum (representing a monthly underpayment) does not require the copyright owner to accept such sum, or to forego any right, relief, or remedy which may be available under law."

Also, interim § 201.19(h) (5) makes clear that the annual statement of account does not replace the obligation to

*Error; line should read: "No. 2999, Arlington, Virginia 22202."

file any monthly statement. Thus, a monthly statement must be filed during the last month of the fiscal year of the person or entity exercising the compulsory license if phonorecords were made or voluntarily distributed under the license during that month.

3. *Filing of Copies of Notices of Intention and Statements of Account in the Copyright Office.* During the April hearing, the suggestion was made that a copy of a notice of intention as served on a copyright owner should be filed in the Copyright Office.¹ However, section 115 (b) of the Act provides that the notice is to be served on the copyright owner, and that, if the registration or other public records of the Copyright Office do not identify the copyright owner, it is sufficient to file the notice in the Office. This is in contrast to the requirements under the current copyright law that a duplicate of all served notices of intent be filed with the Office. It would be inappropriate to require, by regulation, what legislation has changed. Moreover, as the purpose of the notice of intention is to alert a music copyright owner to the use of his or her work under the compulsory license, that purpose is served when the copyright owner receives the notice. Accordingly, the interim regulation does not require that a copy of a notice of intention which has been served on a copyright owner be filed in the Copyright Office. Similarly, copies of monthly and annual statements of account will not be required to be filed in the Office.

In sum, the only documents required to be filed in the Copyright Office under section 115 will be original notices of intention, filed in the Office because the person or entity exercising the license cannot identify the copyright owner. These documents, if accompanied by the \$6 filing fee, will be filed by being placed in the appropriate public records of the Licensing Division of the Office. If a compulsory licensee voluntarily wishes to file a copy of a served notice or statement of account in the Office, the document will be accepted for recordation by the Renewal and Assignment Section as a document "pertaining to a copyright" under section 205(a) of the Act if it is accompanied by the proper recording fee (minimum: \$10) under section 708(4).

4. *Point of Distribution; Reserves.* Paragraph (c) (2) of section 115 states that statutory royalties are payable for every phonorecord made and distributed under the license; it defines distribution as occurring when "the person exercising the compulsory license has voluntarily and permanently parted" with possession of the phonorecord. In discussing the issue of "permanent" disposal for these

¹The suggestion was also made that a copy be served on the record manufacturing facility employed by the person or entity exercising the compulsory license. Consistent with our conclusion that the manufacturing facility need not be identified in the notice (paragraph 2, above), this suggestion has not been adopted. Again, no implication should be drawn from this as to the joint and several liability of record pressers and the like for copyright infringement.

purposes, the relevant Report of the Judiciary Committee of the House of Representatives states (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. at 110-111):

Under existing practices in the record industry, phonorecords are distributed to wholesalers and retailers with the privilege of returning unsold copies for credit or exchange. As a result the number of recordings that have been "permanently" distributed will not usually be known until some time—six or seven months on the average—after the initial distribution. In recognition of this problem, it has become a well-established industry practice, under negotiated licenses, for record companies to maintain reasonable reserves of the mechanical royalties due the copyright owners, against which royalties on the returns can be offset. The Committee recognizes that this practice may be consistent with the statutory requirements for monthly compulsory license accounting reports, but recognizes the possibility that, without proper safeguards, the maintenance of such reserves could be manipulated to avoid making payments of the full amounts owing to copyright owners. Under these circumstances, the regulations prescribed by the Register of Copyrights should contain detailed provisions ensuring that the ultimate disposition of every phonorecord made under a compulsory license is accounted for, and that payment is made for every phonorecord "voluntarily and permanently" distributed. In particular, the Register should prescribe a point in time when, for accounting purposes under section 115, a phonorecord will be considered "permanently distributed," and should prescribe the situations in which a compulsory licensee is barred from maintaining reserves (e.g., situations in which the compulsory licensee has frequently failed to make payments in the past).

A considerable portion of the testimony at the April hearing revolved around the related questions of the point of permanent distribution and reserves. After carefully reviewing the record of these proceedings, we have concluded that it does not provide any definitive guidance as to a point of final distribution, nor does it give us any basis for regulatory determination of a single, uniform, reserve policy. In the words of one supplemental statement:²

... the prepared statements submitted by various industry representatives, and undoubtedly their supplemental comments, will not in any way serve to solve the problem before the Register. ... I think it vitally important that if positions are to be advanced that will ultimately influence those rules and regulations to be promulgated under authority of the Act, that these positions be supported by documentation equivalent to evidence.

Moreover, we are not persuaded on the current record that any fair basis in fact exists for the regulatory determination of a single, uniform, reserve policy for copyright purposes. The numerous factors and variables which enter into the issue of reserves (for example, configuration of phonorecord, time of year, type of music, popularity of recording artist, and sales history of producer) appear to be such as to make our determination of such a policy realistically impractical, if not impossible.

²Supplemental Statement of W. Robert Thompson, Esq., at 17.

Under these circumstances, interim § 201.19(a)(3) provides in general that permanent distribution of phonorecords occurs one year from the date on which the compulsory licensee actually parts with possession, or at the time when a sale of the phonorecord is "recognized" in accordance with generally accepted accounting principles or Internal Revenue Service practices, whichever of these events is earliest. The intent of this provision is to make the compulsory licensee's reporting requirements for copyright purposes consistent with its overall business reporting practices and requirements, an intent which is reinforced by the necessity of Certified Public Accountant certification of the annual statement of account. Interim § 201.19(a)(4) provides that permanent distribution occurs at when the point a phonorecord is first relinquished from possession with respect to compulsory licensees who have suffered final judgment or similar definitive finding of failure to pay mechanical royalties during a specified period.

Interim Regulation. Part 201 of 37 CFR, Chapter II is amended, on an interim basis, by adding new §§ 201.18 and 201.19 to read as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) *General.* (1) A "Notice of Intention" is a notice identified in section 115 (b) of title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be served on a copyright owner, or in certain cases to be filed in the Copyright Office, to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A separate Notice of Intention shall be served or filed for each nondramatic musical work embodied, or intended to be embodied, in phonorecords made under the compulsory license.

(3) For the purposes of this section, the term "copyright owner" in the case of any work having more than one copyright owner means any one of the co-owners. In such cases, the service of a notice of intention on one coowner under paragraph (e)(2) of this section shall be sufficient with respect to all co-owners.

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

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

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

(ii) The full address, including a specific number and street name or rural route, of the place of business of the person or entity intending to obtain the compulsory license. A post office box or similar designation will not be sufficient for this purpose;

(iii) A statement of the nature of the business organization used by the person or entity intending to obtain the compulsory license in connection with the making and distribution of phonorecords (for example, a corporation, a partnership, or an individual proprietorship); additionally:

(A) If the person or entity intending to obtain the compulsory license is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall so state.

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

(C) In all other cases, the Notice shall include the names of any individuals who own a beneficial interest of twenty-five percent (25%) or more in the entity intending to exercise the compulsory license.

(iv) The title of the nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license, and the names of the author or authors of such work if known;

(v) The type of all phonorecord configurations (for example, single disk, long playing disk, cassette, cartridge, reel-to-reel, or a combination of them) already made (if any) and anticipated to be made under the compulsory license;

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

(vii) The names of the principal recording artists actually engaged and anticipated to be engaged in rendering the performances fixed on phonorecords already made (if any) and anticipated to be made under the compulsory license; and

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

(2) A "clear statement" of the information listed in paragraph (c) (1) of this section requires a clearly intelligible, legible, and unambiguous statement in the Notice itself and (subject to paragraph (c) (1) (iii) (A) of this section) without incorporation by reference of facts or information contained in other documents or records.

(3) Where information is required to be given by paragraph (c) (1) "if known"

or as "anticipated", such information shall be given in good faith and on the basis of the best knowledge, information, and belief of the person signing the Notice. If so given, later developments affecting the accuracy of such information shall not affect the validity of the Notice.

(d) *Signature.* The Notice shall be signed by the person or entity intending to obtain the compulsory license. If that person or entity is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that person or entity is a partnership, the signature shall be that of a partner. The signature shall be accompanied by the printed or typewritten name of the person signing the Notice, and by the date of signature.

(e) *Filing and Service.* (1) If, with respect to the nondramatic musical work named in the Notice of Intention, the registration or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice shall be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by a fee of \$6. Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when a proper Notice and fee are both received in the Copyright Office. A written acknowledgement of receipt and filing will be provided to the sender. Upon request and payment of an additional fee of \$4, a Certificate of Filing will be provided to the sender.

(2) If the registration or other public records of the Copyright Office do identify the copyright owner of the nondramatic musical work named in the Notice of Intention and include an address for such owner, the Notice shall be served on such owner by certified mail or by registered mail sent to the last address for such owner shown by the records of the Office; it shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) *Definitions.* (1) A "Monthly Statement of Account" is a statement accompanying monthly royalty payments identified in section 115(c) (3) of title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) An "Annual Statement of Account" is a statement identified in section 115(c) (3) of title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be filed for every compulsory license to make and distribute phonorecords of nondramatic musical works.

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

owners. In such cases, the service of a statement of account on one coowner under paragraph (b) (5) or (c) (6) of this section shall be sufficient with respect to all coowners.

(4) A phonorecord is considered "voluntarily distributed" if the person or entity exercising the compulsory license has voluntarily and permanently parted with possession of the phonorecord. For this purpose a person or entity exercising the compulsory license shall be considered to have "permanently parted with possession" of a phonorecord made under the license:

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

(ii) In the case of phonorecords relinquished from possession for purposes of sale: (A) one year from the date on which that person or entity actually first parted with possession; or (B) at the time when a sale of the phonorecord is "recognized" by the person or entity exercising the compulsory license, whichever occurs first. For these purposes a person or entity exercising the compulsory license shall be considered to "recognize" the sale of a phonorecord when a sale would be recognized in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board or applicable rules, regulations, and practices of the Internal Revenue Service, whichever would cause the sale to be recognized first.

(iii) In any case, the destruction of a phonorecord made under the compulsory license by the person or entity exercising the license before the person or entity is considered to have "permanently parted with possession" of that phonorecord under paragraphs (i) and (ii) of this section 201.19(a) (4) shall not be considered a "distribution".

(5) The provisions of paragraph (a) (4) (ii) of this section are subject to the following qualification: in any case where, within three years before the phonorecord was relinquished from possession, the person or entity exercising the compulsory license has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors or similar action, to have failed to pay such royalties, that person or entity shall be considered to have "permanently parted with possession" of a phonorecord made under the license at the time at which that person or entity actually first parts with possession. For these purposes the "person or entity exercising the compulsory license" shall mean:

(1) In the case of a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, that corporation;

(ii) In the case of a corporation that is not registered under section 12 of the Securities and Exchange Act of 1934, the corporation of any director, officer, or beneficial owner of twenty-five percent (25 percent) or more of the outstanding securities of the corporation;

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

(b) *Monthly Statements of Account.*

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

(2) *Content.* A Monthly Statement of Account shall be clearly and prominently identified as a "Monthly Statement of Account Under Compulsory License for Making and Distributing Phonorecords", and shall include a clear statement of the following information: (i) The period (month and year) covered by the statement;

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

(iii) The full address, including a specific number and street name or rural route, of the place of business of the person or entity exercising the compulsory license. A post office box or similar designation will not be sufficient for this purpose;

(iv) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license, and the name of the author or authors of such work or works if known;

(v) For each nondramatic musical work embodied in phonorecords made, "voluntarily distributed", or both during the month covered by the statement and owned by the same copyright owner being served with the statement:

(A) The number of phonorecords made under the compulsory license during the month covered by the statement;

(B) The number of phonorecords "voluntarily distributed" under the compulsory license during the month covered by the statement, together with: (i) the catalog number or numbers, and label name or names, used on such phonorecords; and (ii) the names of the principal recording artists engaged in rendering the performances fixed on such phonorecords; and

(C) The playing time of each such nondramatic musical work on the phonorecords.

The information required by paragraphs (A), (B) and (C) of this § 201.19 (b) (2) (v) shall be separately stated and identified for each phonorecord configuration (for example, single disk, long playing disk, cartridge, cassette, or reel-to-reel) made.

(vi) The total royalty payable for the month covered by the statement. For these purposes, the applicable royalty as

specified in section 115(c)(2) of title 17 shall be payable for every phonorecord "voluntarily distributed" during that period. In any case where the person or entity exercising the compulsory license falls within the provisions of paragraph (a)(4) of this section the statement shall also include a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that paragraph.

(3) A "clear statement" of the information required by paragraph (b)(2) of this section requires a clearly intelligible, legible, and unambiguous statement in the Statement of Account itself and without incorporation by reference of facts or information contained in other documents or records.

(4) *Oath and Signature.* (i) Each Monthly Statement of Account shall be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 28 of the United States Code, which shall be signed by the person or entity exercising the compulsory license. If that person or entity is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that person or entity is a partnership, the signature shall be that of a partner. The signature shall be accompanied by the printed or typewritten name of the person signing the affidavit or statement, and by the date of signature.

(ii) The affidavit or statement required by paragraph (b)(4)(i) of this section shall state that the person signing the affidavit or statement has examined the statement of account, and that all statements of fact contained therein are true, complete, and correct to the best of that person's knowledge, information, and belief, and are made in good faith.

(5) *Service.* Each Monthly Statement of Account shall be served on the copyright owner to whom or which it is directed, together with the total royalty for the month covered by statement, by certified mail or by registered mail on or before the twentieth day of the immediately succeeding month. It shall not be necessary to file a copy of the statement in the Copyright Office. A separate Monthly Statement of Account shall be served for each month during which a phonorecord or phonorecords are made or "voluntarily distributed" under the compulsory license. The Annual Statement of Account identified in paragraph (c) of this section does not replace any Monthly Statement of Account.

(c) *Annual Statements of Account.*

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

(2) *Annual Period.* An Annual Statement of Account shall cover the full fiscal year of the person or entity exercising the compulsory license.

(3) *Content.* An Annual Statement of Account shall be clearly and prominently identified as an "Annual Statement of Account Under Compulsory License for Making and Distributing

Phonorecords", and shall include a clear statement of the following information:

(i) The fiscal year covered by the statement;

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

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

(A) If the person or entity exercising the compulsory license is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the statement shall so state.

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

(C) In all other cases, the statement shall include the names of any individuals who own a beneficial interest of twenty-five percent (25 percent) or more in the entity exercising the compulsory license.

(iv) The full address, including a specific number and street name or rural route, of the place of business of the person or entity exercising the compulsory license. A post office box or similar designation will not be sufficient for this purpose;

(v) The title or titles of all nondramatic musical works embodied in phonorecords made under the compulsory license during the fiscal year covered by the statement and owned by the copyright owner being served with the statement, and the name of the author or authors of such works if known;

(vi) For each nondramatic musical work embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the statement:

(A) The number of such phonorecords made under the compulsory license through the end of the fiscal year covered by the statement, including any made during earlier years;

(B) The number of such phonorecords which have never been relinquished from possession of the person or entity exercising the compulsory license through the end of the fiscal year covered by the statement;

(C) The number of such phonorecords involuntarily relinquished from possession (as through theft or fire) of the person or entity exercising the compulsory license during the fiscal year covered by the statement and any earlier

years, together with a description of the facts of such involuntary relinquishment;

(D) The number of such phonorecords voluntarily relinquished from possession of the person or entity exercising the compulsory license for purposes of sale during the fiscal year covered by the statement, but not "voluntarily distributed" by the end of that year;

(E) The number of such phonorecords destroyed during the fiscal year covered by the statement and any earlier years, by the person or entity exercising the compulsory license, before such phonorecords were "voluntarily distributed";

(F) The number of such phonorecords "voluntarily distributed" by the person or entity exercising the compulsory license during all years before the fiscal year covered by the statement;

(G) The number of such phonorecords "voluntarily distributed" by the person or entity exercising the compulsory license during the fiscal year covered by the statement, together with (1) the catalog number or numbers, and label name or names, used on such phonorecords; and (2) the names of the principal recording artists engaged in rendering the performances fixed on such phonorecords;

(H) If the information given under paragraphs (A) through (G) of this § 201.19(c)(3)(vi) does not reconcile, the statement shall also include a clear and detailed explanation of the difference. For these purposes, the information given under such paragraphs shall be considered not to reconcile if, after the number of phonorecords given under paragraphs (B), (C), (D), (E), and (F) are added together and that sum is deducted from the number of phonorecords given under paragraph (A), the result is different from the amount given under paragraph (G); and

(I) The playing time of each nondramatic musical work on such phonorecords.

The information required by paragraphs (A) through (I) of this § 201.19(c)(3)(vi) shall be separately stated and identified for each phonorecord configuration (for example, single disk, long playing disk, cartridge, cassette, or reel-to-reel) made.

(vi) The total royalty payable for the* fiscal year covered by the statement. For these purposes, the applicable royalty as specified in section 115(c)(2) of title 17 shall be payable for every phonorecord "voluntarily distributed" during the fiscal year covered by the statement. In any case where the person or entity exercising the compulsory license falls within the provisions of paragraph (a)(4) of this section the statement shall also include a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that paragraph; and

(viii) The total sum paid, under Monthly Statements of Account, by the person or entity exercising the compulsory license to the copyright owner be-

ing served with the statement during the fiscal year covered by the statement.

(4) A "clear statement" of the information required by paragraph (c)(3) of this section has the meaning set forth in paragraph (b)(3) of this section.

(5) *Signature and Certification.* (i) Each Annual Statement of Account shall be signed by the person or entity exercising the compulsory license. If that person or entity is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that person or entity is a partnership, the signature shall be that of a partner. The signature shall be accompanied by the printed or typewritten name of the person or entity signing the statement, and by the date of signature.

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

We have examined the attached "Annual Statement of Account Under Compulsory License For Making and Distributing Phonorecords" for the fiscal year ended (date) of (name of person or entity exercising compulsory license) applicable to phonorecords embodying (title or titles of nondramatic musical works embodied in phonorecords made under the compulsory license) made under the provisions of section 115 of title 17 of the United States Code and applicable regulations of the United States Copyright Office. Our examination was made in accord with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

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

(City and State of Execution)

(Signature of Certified Public Accountant)

(Date of Opinion)

(6) *Service.* (i) Each Annual Statement of Account shall be served on the copyright owner to whom or which it is directed by certified mail or by registered mail on or before the twentieth day of the third month following the end of the fiscal year covered by the statement. It shall not be necessary to file a copy of the statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (b)(5) of this section.

(ii) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (c)(3)(vii) of this section is greater than the amount stated in that Statement under paragraph (c)(3)(viii) of

this section, the difference between such amounts shall be delivered to the copyright owner together with service of the Annual Statement. The delivery of such sum does not require the copyright owner to accept such sum, or to forego any right, relief, or remedy which may be available under law.

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

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553; §§ 115; 702; 708.)

Dated: December 21, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc. 77-36989 Filed 12-28-77; 8:45 am]

* Error; line should read: "(vii) The total royalty payable for the"