



# ANNOUNCEMENT

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

## FINAL REGULATIONS

37 CFR Part 201

### COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

The following excerpt is taken from Volume 45, Number 231 of the Federal Register for Friday, November 28, 1980 (pp. 79038-79051).

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#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 77-3A]

Compulsory License for Making and  
Distributing Phonorecords

AGENCY: Library of Congress, Copyright  
Office.

ACTION: Final regulations.

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**SUMMARY:** This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting final regulations to implement section 115 of the Copyright Act of 1976, title 17 of the United States Code. That section establishes a compulsory license for the making and distribution of phonorecords of nondramatic musical works. The effect of the final 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.

**EFFECTIVE DATE:** December 29, 1980.

**FOR FURTHER INFORMATION, CONTACT:**  
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**SUPPLEMENTARY INFORMATION:**

**The Background of This Action**

Section 115 of the Copyright Act 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 the section, obtain a compulsory license to make and distribute phonorecords of the work" for certain purposes. A compulsory license permits that use of a copyrighted work without the consent of the copyright owner if certain conditions are met and royalties paid.

Paragraphs (b) and (c) of section 115 direct the Copyright Office to issue regulations governing the content and filing of certain notices and Statements of Account under this section. On April 26, 1977, in accordance with an Advance Notice of Proposed Rulemaking (42 FR 16837), the Office held a public hearing aimed at formulating regulations under this section. After Considering the

testimony given at the hearing and in supplemental statements, on December 28, 1977 (42 FR 64889), the Copyright Office issued interim regulations. After reviewing the public comments received in response to the interim regulations, the Copyright Office on September 28, 1978 (43 FR 44511): (1) Adopted amendments to the interim regulations; and (2) announced a public hearing to be held on November 28 and 29, 1978, to take testimony on the interim regulations as amended. The record remained open until January 31, 1979 (43 FR 57252), for receipt of additional written statements.

Most of the testimony and comments in connection with the November, 1978, proceedings were directed at one complex and difficult issue: the "point in time" when a phonorecord is to be considered "permanently distributed," thus making the statutory royalty due and payable. 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 laying out the Copyright Office's general responsibility under section 115, Congress has, in effect, mandated the Register of Copyrights to add specificity to this definition. The Report of the Judiciary Committee of the House of Representatives (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. pp. 110-111) states:

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 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.)* (Emphasis added)

In § 201.19(a)(4) of the Copyright Office's amended interim regulations, the Office sought to fulfill its responsibility to "prescribe a point in time when, for accounting purposes \* \* \*, a phonorecord will be considered 'permanently distributed,'" and to establish accounting requirements to assure full payment of all royalties to which copyright owners are entitled under the compulsory license. The record of the November, 1978, hearing and statements, which focused on this provision, proved illuminating; after giving careful consideration to the views of the various interested parties, the Copyright Office reached some tentative conclusions as to what our final regulations on this point should provide. On September 7, 1979, the Office published a notice in the Federal Register (44 FR 52280) to announce:

(1) The availability of a Background Paper outlining and discussing our

conclusions; and (2) a public meeting to be held on October 19, 1979 to consider comments on the principles and conclusions embodied in the Background Paper.

The purpose of the October 19, 1979 meeting, as expressed in the public notice, was to "sharpen, narrow, and, if possible, settle remaining issues and thus to assist the Copyright Office in issuing final regulations on the subject." The meeting, and the supplemental comments filed after it, helped the Copyright Office in the revision, refinement, and clarification of its tentative conclusions and in the drafting of regulatory language.

Above all, the meeting and comments convinced the Copyright Office of the need to take definitive action and to issue final regulations without further proceedings. The Copyright Office is also aware, however, that the parties remain divided on how to resolve this difficult question, and that the controversy over it is likely to continue. Under the circumstances, the Office emphasizes that these final regulations should be considered experimental and subject to reconsideration in the light of experience.

#### General Principles Underlying Final Regulations

Although the compulsory license for phonorecords (the so-called "mechanical license") has been a fixture of the copyright law since 1909, the shift in the obligation to pay royalties from parts "manufactured" to phonorecords "made and distributed" is new. Royalty payments under voluntary, negotiated recording licenses have long been based on the "made and distributed" criterion. However, the application of this criterion in a compulsory context—accompanied by the definition of "distributed" in section 115(c)(2) and the directive in the House Report—presents a different and unprecedented situation. The record of these proceedings is full of warnings from both sides about the hazards that the Copyright Office must avoid as it ventures into accounting practices previously un governed by the copyright law.

The record industry's warnings are centered around two major concerns: (1) That the accounting system not be so complicated and burdensome that it negates the purpose of the compulsory license; and (2) that the system adopted not be one with a built-in likelihood of overpayments. The music publishers argue that: (1) The system must be tight enough to ensure against careless or colorable accounting practices and

deliberate manipulation; and (2) the system must not only guarantee a full pay-out of all royalties due to copyright owners, but it must also require prompt payment and it must prevent manipulation to allow unjustified delays in royalty payments, thus depriving copyright owners of interest on the monies due them.

The Copyright Office has considered these arguments, and it has striven to take account of them. In preparing these final regulations, the guiding principle has been to make the compulsory license a workable tool while assuring that copyright owners will receive "full and prompt payment for all phonorecords made and distributed." (H.R. REP. NO. 94-1476, 94th Cong., 2d Sess. p. 110). Specifically, the Copyright Office has adopted three fundamental criteria:

(1) *The accounting procedures must not be so complicated as to make use of the compulsory license impractical.*

The Copyright Office believes that in carrying out its responsibilities under section 115, it has a duty to provide a system that is a realistic alternative to voluntary licensing. Neither the record-keeping nor the CPA audit requirements should be so burdensome or expensive as to undermine the Congressional intention by putting compulsory licensing out of the reach of record companies. The task is to provide a system that will function, not one so loaded with paperwork that it becomes prohibitive.

In line with this criterion, the Copyright Office has abandoned the requirement for tracking phonorecord shipments, which was embodied in the interim regulations. The Office now concludes that a requirement for actually tracking particular phonorecord shipments, and for determining whether phonorecords are destroyed or reshipped, is impractical. For the same reason the Office has not adopted two alternative suggestions as to methods for reducing monthly phonorecord reserves: (1) Systems of averaging outstanding reserve balances, which would require complicated recalculations of all balances each month; and (2) systems of customer-by-customer accounting, which would substantially multiply the necessary paperwork. These alternative accounting systems are discussed in more detail below. Although the Copyright Office is inclined to doubt that the use of any of them would be impossible in theory, it is convinced that, as a practical matter, requirement of any of them would put compulsory

licensing beyond the means of many record companies.

(2) *The accounting system must insure full payment, but not overpayment.*

Despite their obvious dissatisfaction, copyright owners must accept the legislative decisions embodied in section 115: (1) To base royalties on phonorecords "made and distributed"; (2) to define "distributed" in a way that clearly permits the setting up of reserves against which return can be credited; and (3) to permit the final pay-out to be deferred to a "point in time" to be provided by Copyright Office regulations. Within this legislative framework, copyright owners are justified in demanding establishment of an accounting system that guarantees payment for all phonorecords that are either distributed without a right of return or that are not returned within a stated period.

Like Congress, the Copyright Office is conscious of the often-heard charges of careless or colorable accounting practices by certain record companies which, it is alleged, have deprived copyright owners of substantial royalties in the past. The Office agrees that the regulatory system it adopts must be tight enough to guard against this sort of abuse and to assure "full and prompt" payment of royalties. However, the Office cannot accept the further argument that Congress actually envisioned an over-all system in which frequent overpayments were to be expected, as a means for balancing possible negligence, dishonesty, or manipulation by certain record companies. The Office believes that the statutory requirement for an annual CPA audit, coupled with our regulatory requirements including the application of "generally accepted accounting principles" (GAAP) to the recognition of revenue from the sale of phonorecords, should go a long way toward assuring copyright owners payment of all monies to which they are entitled—that is, statutory royalties for all phonorecords shipped, minus phonorecords returned within a reasonable time-frame. Since actual tracking of phonorecords or shipments is impractical, the Copyright Office has adopted FOFI (first-out-first-in) as the accounting convention that most closely conforms to the Congressional intent. The Office believes that an accounting system based on FOFI, audited by a CPA in accordance with GAAP, will result in full payments to copyright owners, but will minimize the likelihood of overpayments that would arise more often under LOFI (last-out-first-in).

(3) *The accounting system must insure prompt payment.*

Although section 115 contemplates that royalty payments for a certain percentage of phonorecords shipped will be deferred and held in reserve to be credited against returns, Congress also clearly intended that reserves not be held beyond a reasonable time—that, even with deferral, payments should still be "prompt." The House Report on the revision bill emphasizes the "particular" importance of the task entrusted to the Copyright Office: "to prescribe a point in time when \* \* \* a phonorecord will be 'permanently distributed' \* \* \*"

In its amended interim regulations, the Copyright Office fixed this "point in time"—the outer limit for holding reserves—at one year measured from the month of a particular shipment of phonorecords. In the preliminary conclusions expressed in its September 7, 1979, Background Paper, the Office adhered to this formula in the face of arguments from the record industry that it be substantially lengthened and from the copyright owners that it be substantially shortened. For reasons to be discussed in detail below, however, the Copyright Office has now concluded that the twelve-month "point in time" should be reduced to nine months. The Copyright Office believes that a nine-month cut-off will bring faster royalty payouts to copyright owners, thus coming closer to the requirement for "full and prompt payment," while not resulting in more overpayments by record companies.

#### **Certain Conclusions From the Background Paper Adopted**

Several of the conclusions underlying the formula for calculating royalties, as presented in our Background Paper of September 7, 1979, were challenged at the October, 1979, meeting. The Copyright Office's consideration of the arguments put forward at the meeting has led the Office to confirm three of these conclusions:

(1) To require the application of FOFI, rather than LOFI, to the number of returned phonorecords;

(2) To apply the formula presented in our Background Paper on a general basis rather than a customer-by-customer basis; and

(3) Not to include in the regulations an explicit requirement for the refund of overpayments.

Our reasons for each of these conclusions can be summarized briefly as follows:

(1) *Adoption of FOFI.*

A principal element of the formula for calculating royalties presented in the

Copyright Office's Background Paper is the application of an accepted accounting convention—either FOFI (first-out-first-in) or LOFI (last-out-first-in)—to the number of returned phonorecords in order to reduce and possibly eliminate particular monthly phonorecord reserves. As illustrated in the appendices to the Background Paper, the Copyright Office applied both FOFI and LOFI to nine different shipment and return patterns to determine which of the two accounting conventions best meets the goal of assuring full remuneration without overpayment. The Office's conclusion, which was supported by the documentation, was that FOFI more accurately reflected actual sales in various situations, and that overpayments of royalties were more likely to occur under LOFI than under FOFI.

During the public meeting, it became evident that the representatives of music publishers (the National Music Publishers Association and the Harry Fox Agency, hereafter referred to as NMPA/HFA) had strong objections to the adoption of FOFI as the applicable accounting convention. Their views, which were formalized in their Supplemental Comments, focused on two objections: (1) The loss of earned interest during the period that royalties are held in reserve by the compulsory licensee; and (2) the ability of the licensee to manipulate reserves under FOFI to delay payment to music copyright owners even further.

The Copyright Office recognizes that, particularly in a time of high inflation and fluctuating interest rates, the timing of royalty payments is an important consideration in assuring that copyright owners are fully remunerated. It is true that, if compulsory licensees were free, as a matter of course, to overestimate the number of returns and to establish artificially high reserves, royalty payments on some phonorecords would be delayed and interest would be lost. The formula here adopted for the calculation and payment of royalties, however, does not give licensees that freedom. On the contrary, the regulations require the establishment of reserves based on reasonable estimates of returns made in accordance with generally accepted accounting principles (GAAP). Furthermore, in situations where the compulsory licensee has correctly established reserves or has established a low reserve, there is no possibility of any loss of earned interest. The Copyright Office believes that the application of GAAP will reduce the likelihood of unusually high reserves,

thereby minimizing the possibility for losses of earned interest.

In their testimony and Supplemental Comments, NMPA/HFA also sought to demonstrate the possibility of manipulatory abuse under FOFL. The example presented by NMPA/HFA does show a potential for abuse; it should also be noted that similar abuse could occur under LOFL, though on a smaller scale. The Copyright Office is not convinced, however, that the hypothetical situation posed in the example chosen by NMPA/HFA is, in fact, a realistic one. When considered against the practicalities of multiple monthly shipments and returns, the costs involved in manipulation, the possible penalties for detected manipulation, and the requirement for CPA certification, the likelihood of substantial manipulative abuse does not seem great.

In their Supplemental Comments, NMPA/HFA suggested the alternative use of proportional averaging as a compromise to resolve the FOFL/LOFL dispute. This suggestion seemed worth exploring, and we have studied the possible application of both straight averaging and of proportional averaging<sup>1</sup> as a means of offsetting particular monthly phonorecord reserves by returned phonorecords.

On the basis of its studies, the Copyright Office concluded that neither straight averaging nor proportional averaging reflected actual sales in various situations any more accurately than FOFL. Furthermore, the Office believes that the added complexities necessitated by the adoption of either straight or proportional averaging would outweigh any benefits that possibly might be derived from one of these systems. For these reasons, the Copyright Office has decided to adopt FOFL.

*(2) Application of the formula on a general basis.*

The foundation of the Copyright Office's formula for calculating royalties is the application of FOFL to the reduction of separate and distinct monthly phonorecord reserves. A particular monthly phonorecord reserve is comprised of reserves taken against all applicable shipments made during the month covered by the Monthly Statement; there is no differentiation among specific customers.

In their Supplemental Comments, NMPA/HFA urged that—

• • • compulsory licensees should only be permitted to credit phonorecords returned from a particular customer against royalty reserves maintained by the compulsory

licensee with respect to prior shipments of the same phonorecord to such customer (Supplemental Comments by the NMPA and HFA, November 29, 1979, p. 30.)

Similarly, NMPA/HFA suggested that the carrying forward and adjustment of a negative reserve balance in order to apply overpayments against royalty payments only should be permitted on a customer-by-customer basis.

The Copyright Office recognizes that it may be possible to construct simulated shipment models purporting to show inadequacies in the system of applying phonorecord returns against the earliest eligible phonorecord reserve, regardless of customer. The Office remains unconvinced, however, that simulations of this sort are realistic or that application of our formula on a general rather than a customer-by-customer basis would result in any substantial harm to music copyright owners. At the same time, the adjustment of reserves on a customer-by-customer basis would require a substantial increase in recordkeeping and would add enormous complexity to the estimation of reserves and the compulsory license mechanism in general. Moreover, adjustments on a customer-by-customer basis would, in many instances, artificially and unnecessarily increase the number of phonorecords ultimately considered "voluntarily distributed" beyond the number actually sold. For these reasons, the Copyright Office has decided against applying the formula on a customer-by-customer basis.

*(3) No express requirement for the refund of overpayments.*

In its Background Paper, the Copyright Office indicated that it rejected a request by the Recording Industry Association of America (hereafter referred to as RIAA) to specify in the regulations that refunds may be available where a compulsory licensee finds it has made an overpayment of royalties. The Office did, however, repeat from its Notice accompanying the amended interim regulations that—

• • • we believe that resolution of this issue in particular cases is best left to negotiation between the parties, or application of general legal principles in the appropriate forum. (43 FR 44515.)

During the public meeting and in their Supplemental Comments, the RIAA again urged us to include a specific requirement for refunds for overpayments. On the other hand, the NMPA/HFA strongly disapproved of—

• • • any such reference—which implicitly or explicitly accords recognition to the

incorrect view that compulsory licensees have any claim whatsoever for refunds to any royalty overpayments. (Supplemental Comments by the NMPA and HFA, November 19, 1979, p. 37.)

In its earlier comments on this point, the Copyright Office did not intend, implicitly or explicitly, to suggest that music copyright owners have any legal obligation to make refunds for royalty overpayments. When the Office mentioned "negotiation between the parties" in this context, it was thinking of cases involving litigation or other forms of legal process where the amount of overpayment might be a factor to consider in settling a dispute; the Office did not mean to imply that, in a strict compulsory license situation, either the licensee has any right or the copyright owner any obligation to negotiate concerning overpayments. Without prejudging the issue in any way, however, the Copyright Office continues<sup>2</sup> to believe that resolution of this issue in particular cases is best left to application of general legal principles in the appropriate forum.

**Changes and Clarifications in the Regulatory Formula for Calculating Royalties**

The October, 1979, meeting and the Supplemental Comments submitted by the parties convinced the Copyright Office that several aspects of the proposed regulatory formula, as presented in the Background Paper, needed clarification. In addition, arguments submitted by representatives of the music copyright owners led the Office to reconsider other components of the formula. As a result of this process, the Copyright Office has made three major changes and clarifications in the formula for computing royalties:

*(1) Segregation of Phonorecords Shipped into Three Categories.*

In their Supplemental Comments, NMPA/HFA suggested that the formula for calculating royalties—

• • • should be revised so that reserves are subtracted from the gross number of phonorecords relinquished from possession for purposes of sale prior to the computation of the total gross number of phonorecords shipped in a given month. This will reduce the likelihood that the reserve size will inadvertently be determined on the basis of all phonorecords shipped—not simply those shipped for purposes of sale. (Emphasis supplied in text) (Supplemental Comments by the NMPA and HFA, November 19, 1979, p. 40.)

While this calculation step was implicit under the formula presented in its Background Paper, the Copyright Office

<sup>1</sup>Error; line should read: "averaging and of proportional averaging"

<sup>2</sup>Error; line should read: "however, the Copyright Office continues"

recognizes that inadvertent errors and misunderstandings would be less likely to occur if the differing types of shipments were specifically segregated, and if reserves were computed and subtracted before gross shipments were figured into the formula.

Earlier in these proceedings, NMPA/HFA offered the following proposal:

If phonorecords shipped on which royalties have not been paid are returned . . . and such phonorecords are subsequently reshipped for sale in the secondary market, royalties should be paid on the basis of 100% of the records shipped—i.e., no reserves should be permitted with respect to these shipments. The rationale for this is clear. When phonorecords are reshipped for sale in the secondary market, record companies do not generally permit their return. And . . . virtually all phonorecords shipped in the secondary market will be sold by the record companies. At this point, there is no reason for the royalty payments to be withheld from copyright owners on the false premise that they are needed to offset returns which will not be forthcoming. (Supplemental Statement by the NMPA and HFA, January 31, 1978, pp. 39-40.)

The Copyright Office agreed in its Background Paper that, in the situation described, the accounting practices adopted should not permit the taking of reserves where no right of return exists, but the Office suggested that this result should be achieved by the application of GAAP rather than by any specific provision in the regulations. The Copyright Office has now reached a different conclusion: having recognized the desirability of computing and subtracting reserves before figuring in shipments on which no reserve can be taken, the Office has revised its general formula to take account of both of these proposals by NMPA/HFA. Under the new formula, the compulsory licensee must determine the monthly totals of three distinct types of shipments: (1) Phonorecords shipped for sale with a right of return; (2) phonorecords shipped for sale without a right of return; and (3) phonorecords shipped for purposes other than sale. It is only with respect to the first type of shipment that reserves can be taken.

(2) *The GAAP Alternative*

In their Supplemental Comments, NMPA/HFA state:

The Copyright Office has clearly indicated that the point in time when a phonorecord is to be considered "permanently distributed" for purposes of the payment of reserved royalties to copyright owners is one year (or such shorter time that may be mandated by GAAP) as measured from the month of a particular shipment of phonorecords. We feel that in the Discussions and in the Background Paper, the GAAP alternative is not given due

emphasis. We request the Copyright Office to specifically state it does not expect compulsory licensees to treat the rule simply as a strict one-year rule—i.e., that it fully expects compliance with the obligation to pay royalties on reserves sooner, if such would be mandated by GAAP. (Supplemental Comments by the NMPA and HFA, November 19, 1978, p. 39).

Ever since the early stages of these proceedings, the Copyright Office has intended the reserve holding period—the "point in time" beyond which reserves could not be held and would have to be paid out—to be an outside limit; if GAAP were to mandate an earlier pay-out, it would control. The Office agrees that, in concentrating upon what happens when the specified reserve holding period ends and the reserve lapses, it may not have given enough emphasis to the "GAAP alternative" in its discussions of the problem. We have, therefore, made it explicit in the final regulations.

Moreover, because the operation of the compulsory license adopted under these final regulations differs from the operation contemplated in the amended interim regulations, the "GAAP alternative" will also operate differently. Under the amended interim regulations, specific shipments of records were supposed to be tracked and all reserves accumulated into one aggregate group; a reserve reduction, if mandated by GAAP, would affect the aggregate reserve group. The final regulations have replaced the actual tracking of phonorecord shipments and the aggregate accumulation of reserves with a system based on the application of FOFI to separate and distinct monthly phonorecord reserves. Under the final regulations, a reserve reduction, if mandated by GAAP, will affect these separate reserves. The Copyright Office has decided that applying FOFI to reduce reserves in this situation would be consistent with the decision to apply FOFI to reduce reserves where phonorecords are returned to the compulsory licensee. Accordingly, the Copyright Office has revised paragraphs (a)(5)(iii) and (b) of § 201.19 of the final regulations not only to state the "GAAP alternative" explicitly, but also to set forth the procedures for carrying it out.

(3) *Cut-off at Nine Months Rather Than One Year.*

The "point in time" which must be fixed as the outer limit for the holding of reserves has been set in our amended interim regulations at one year, measured from the month of a particular shipment of phonorecords. The Copyright Office's Background Paper

proposed that the Office adhere to this cut-off point, and rejected proposals by NMPA/HFA to measure the period from the release date of the recording, or alternatively, from the date of distribution following a period when the recording had been deleted from the compulsory licensee's active catalog. The Copyright Office's position on this point was that "measuring the period from actual shipments brings us much closer to the Congressional intent." With respect to the length of the period itself, NMPA/HFA have consistently proposed, throughout this proceeding, that the point at which there has been a "permanent parting with possession" of a phonorecord by the compulsory licensee should be set at six months. In our September 28, 1978, Notice we stated that—

. . . we can find no justification for the 6 months suggestion, and a period shorter than 1 year would appear to impose an unjustifiable burden on compulsory licensees. (43 FR 44516.)

We reiterated this view in our Background Paper.

In their Supplemental Comments, NMPA/HFA made some new points with respect to the designation of the "point in time":

Recent developments in the record industry itself support the notion that the normal time lag between shipments and returns is probably as slight as four months. RIAA has recently adopted a rule to the effect that phonorecords will be certified as having reached the coveted sales standards that qualify for gold and platinum certification at the close of the period terminating 120 days following release . . . In addition, RCA Records has recently adopted strict limitations regarding the number of phonorecords which their customers may return. A customer's return allowance, under the new RCA system, will be a percentage of its gross sales during the fourth preceding month. This is clear evidence that RCA believes returns will come in within four months following shipment. (Supplemental Comments by the NMPA and HFA, November 19, 1978, pp. 19-20.)

The Association of Independent Music Publishers also put forward new arguments relating to the sales history of popular records and suggested that six months should be considered the outer limit for the maintenance of reserves.

Recognizing that the economy in general, and the record industry and its business practices in particular, were in a state of flux, the Copyright Office felt that these new arguments justified a review of the one-year period. A principal concern in this review was the impact that a holding period of shorter

than one year would have on the number of phonorecords that ultimately would be considered "voluntarily distributed" under the general formula. To explore this, the Office recalculated the nine shipment-and-return models contained in the appendices of the Background Paper (which used a one-year cut-off) on the basis of six-month and nine-month holding periods. The Office found that a six-month holding period measured under FOPI resulted in a greater number of phonorecords considered "voluntarily distributed" and, consequently, in an overpayment of royalties in one third of the shipment models. On the other hand, a nine-month holding period measured under FOPI continued to reflect accurately actual sales in the various models while achieving a faster royalty payout to the music copyright owner in the three cases where an unusually high reserve was taken by the compulsory licensee.

As the result of this analysis of the whole problem, the Copyright Office has decided to reduce the one-year holding period to nine months in § 201.19(a)(5)(iii)(B) of the regulations and in the formula for computing royalties found in § 201.19(e)(4)(ii). The Office believes that this change should reduce the potential for damage through reserve manipulation and minimize the loss of interest while providing for a faster pay-out of lapsed reserves to music owners. At the same time, the Office's studies indicate that this modification will not result in unjustifiable overpayments by compulsory licensees.

#### Statement of the Formula

On the basis of the various conclusions discussed above, and on the premises summarized in the next section of this Notice, the Copyright Office has made several changes in the four-step formula developed in the Background Paper. These changes have been incorporated into a five-step formula to be used in computing monthly royalty payments under a compulsory license. This formula, which is outlined here, is set out in detail in § 201.19(e)(4)(ii) of the final regulations.

#### Formula for Calculating Royalties:

*Step 1: Compute the total number of phonorecords that, during the given month, were shipped for purposes of sale with a privilege of return. (This total does not include: (1) Any phonorecords relinquished from possession for purposes of sale but without a privilege of return, or (2) any phonorecords relinquished from possession*

*for purposes other than sale.)*  
*Step 2: Subtract the number that have been reserved in the given month. (First, multiply the subtotal from Step 1 by the percentage reserve level established under GAAP, and then deduct the result from that same subtotal.)*  
*Step 3: Add the total of all phonorecords shipped during the month that were not counted in Step 1. (This is the total of: (1) All phonorecords relinquished from possession for purposes of sale but without a privilege of return, plus (2) all phonorecords relinquished from possession for purposes other than sale.)*  
*Step 4: Make any necessary adjustments with respect to reserves for previous months; three types of adjustment may be possible:*  
 (a) *Sales revenue "recognized":* If in the given month, revenue from the sale of phonorecords shipped in any previous month is being "recognized" under GAAP, add the total of such phonorecords.  
 (b) *Lapsed reserves:* If there are any phonorecords that were reserved in the ninth previous month and have not been offset under FOPI by actual returns, add the total of such phonorecords.  
 (c) *Reduction of negative reserve balance:* If the aggregate reserve balance for all previous months is a negative amount, subtract the number of phonorecords shipped during the given month that have been used to reduce the negative reserve balance.  
*Step 5: Multiply by the statutory royalty rate. (Multiply the result of Step 3, as adjusted if necessary by Step 4, by the statutory rate of 2¢ cents or ½ cent per minute or fraction of playing time, whichever is larger; this gives you the monthly royalty payment.)*

#### Explanation of Certain Premises Underlying the Formula

The following points are intended to help in interpreting and applying the formula:

*Step 1:* The figure arrived at in this step should represent every phonorecord shipped for purposes of sale during the month with the privilege of return—that is, every shipment for sale where the recipient was given the right to return unsold phonorecords for credit or exchange. Put another way, it should represent the total of all phonorecords shipped during the month minus two categories of shipments: (1) Phonorecords shipped for sale without any privilege of return, and (2) phonorecords shipped for purposes other than sale. No reserves can be taken against these latter two categories of shipments, which will be figured into the formula in Step 3.

*Step 2:* This step involves the calculation and deduction of the monthly reserve.

(a) With respect to phonorecords shipped for sale with a privilege of

return, the compulsory licensee establishes a "reserve level"—a percentage figure representing an estimate of returns, which must be made in accordance with generally accepted accounting principles (GAAP). The reserve level percentage for a particular month is a cumulative figure; in effect, it represents the best realistic estimate, in combination with estimates made for earlier months, of the ultimate percentage of returns—an estimate of final percentage, out of all phonorecords of the sound recording that are shipped for sale with a privilege of return, that will, in fact, be returned.

(b) Under GAAP this cumulative reserve level need not remain constant; each month it may be changed upward or downward in response to the sales history of the record or other variables. However, fluctuations in the reserve level cannot be used as the basis for a retroactive increase in the number of phonorecords remaining in previously established monthly phonorecord reserves. Moreover, even if the compulsory licensee is swamped with returns from previous shipments, the reserve level for a given month cannot be set under GAAP at more than 100%.

(c) Each month an amount, representing the reserve level percentage of the phonorecords shipped for sale during the month accompanied by a right of return, is placed in that month's phonorecord reserve. In Step 2 of the formula, this amount is deducted from the subtotal arrived at in Step 1.

(d) Note that the amounts in Step 2 are gross rather than net; no deductions are made in Step 2 for actual returns. This represents a change from § 201.19(a)(4)(ii)(B) of our amended interim regulations (43 FR 44518), under which payment was to be made on the basis of "net sales" as opposed to "gross sales." This netting of sales, before any adjustment of reserves takes place, utilizes a procedure akin to the LOFI ("last-out-first-in") accounting convention. Since, as was discussed earlier in this Notice, the Copyright Office has concluded that application of LOFI is not desirable in meeting the statutory objectives, the final regulations require that reserve and royalty calculations be based on gross, rather than net, figures.

*Step 3:* Here you add in all of the remaining phonorecords shipped during the month: (1) All phonorecords shipped for sale that are not accompanied by the right to return unsold phonorecords for credit or exchange; and (2) all phonorecords shipped for purposes other than sale. The first of these



categories will, in most cases, include phonorecords shipped to secondary and tertiary markets. The second category will include phonorecords shipped voluntarily for purposes such as promotion, gift, rental, loan, lease, etc. For both of these categories, the full amount of the royalty is payable upon shipment; since no returns can be anticipated no reserves can be set up.

*Step 4:* The subtotal arrived at in Step 3 will represent the monthly total of voluntarily distributed phonorecords unless an adjustment in that figure is necessary. The necessity for making an adjustment arises in three specific situations:

(a) *Sales revenue "recognized."* Under the formula, it may be possible for revenue from the sale of phonorecords shipped in previous months and placed in a phonorecord reserve to be "recognized" under GAAP in the month covered by the Statement. In this case, that number of phonorecords is added to the subtotal resulting from Step 3 of the formula. Correspondingly, particular monthly phonorecord reserves are reduced to offset these "recognized" phonorecords. How the latter process would work in actual accounting practice is explained in § 201.19(b) of our final regulations.

(b) *Lapsed reserves.* Assuming they have not been offset by actual returns or already paid out as "recognized" sales under GAAP, any reserves remaining from the ninth previous month must be added to the subtotal from Step 3. As noted earlier, the Copyright Office has adopted FOFI as the means of offsetting returns against reserves and determining the amount of lapsed reserves that must be paid out after the nine-month holding period. How this would work in actual accounting practice is described in § 201.19(c) of our final regulations.

(c) *Reduction of negative reserve balance.* If, at any point, the total number of phonorecords that have been returned is greater than the total number of phonorecords that have been placed in the various monthly reserves, the reserve balance will consist of a negative figure representing overpayments. Rather than wiping out the negative balance at the end of the nine months, the final regulations provide for a negative reserve balance to be carried indefinitely and to be reduced by applying it against shipments of the same recording under the same compulsory license. In this situation, the shipment of a phonorecord used to reduce the negative reserve balance would not be considered

"voluntarily distributed" and no royalties need be paid for such shipment. For this reason, the number of phonorecords so shipped will be deducted from the subtotal resulting in Step 3. It should be noted that, unlike monthly phonorecord reserves, the aggregate number of phonorecords represented in a negative reserve balance is accumulated into one group. Since there are no time limitations placed on the life of a negative reserve balance, it is unnecessary to separate this balance into separate and distinct monthly balances. How this would work in actual accounting practice is explained in § 201.19(c)(4) of our final regulations.

*Step 5:* This is a simple calculation, multiplying the subtotal from Step 3, with whatever adjustments necessary from Step 4, by the applicable statutory rate.

#### *Remaining Issues*

In addition to the accounting questions discussed above, there are several other issues remaining to be settled in these final regulations. These issues pertain to: (1) instances where the compulsory licensee is barred from maintaining reserves; (2) the preparation of standard forms for Notices of Intention and Statements of Account; (3) the filing and service of Statements of Account and royalty fees; and (4) the retention of documentation by the compulsory licensee. The Copyright Office has considered the arguments regarding all of these issues and has reached the following conclusions, which are being implemented in these final regulations.

(1) *Barring of the maintenance of reserves.* As part of the Copyright Office's regulatory authority under section 115, Congress directed the Office to "prescribe situations in which a compulsory licensee is barred from maintaining reserves . . ." (H.R. REP. No. 94-1476, 94th Cong., 2d Sess. p. 111.) Section 201.19(d) of the final regulations (paragraph (a)(5) of the amended interim regulations) specifies these situations. In their Supplemental Comments, NMPA/HFA proposed that this paragraph should—

. . . be revised to provide that if, within the preceding ten years, the person or entity exercising a compulsory license has failed to make timely delivery of any Annual Statement of Account (with the required certification by an independent auditor) with respect to any compulsory license, that person or entity should be barred from the maintenance of reserves. (Supplemental Comments by the NMPA and HFA, November 19, 1979, p. 35.)

The Copyright Office believes that the legal implications and consequences of a compulsory licensee's failure to make timely delivery of the Annual Statement of Account with the required certification by a certified public accountant only should have whatever effect a court may determine. On this assumption, it would be improper for the Copyright Office to lay down a hard and fast rule that would automatically bar the maintenance of reserves in these cases. The regulation as issued bars the maintenance of reserves 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 . . .

If a court determines that a compulsory licensee's failure to make timely delivery of the Annual Statement of Account, with the required certification, is tantamount to a failure to pay royalties, the regulation as issued should protect adequately the interests of music copyright owners.

(2) *Forms.* Throughout this proceeding, both NMPA/HFA and RIAA have urged us to prepare standard forms for Notices of Intention and 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. However, the Copyright Office does not believe that the number of compulsory licenses presently in operation, or expected in the immediate future, warrant the substantial time and expense necessary to develop standard forms. For this reason, the Office has decided to refrain from developing standard forms at this time. If the use of mechanical compulsory licenses increases substantially in the future, the Office will reconsider its decision at that time.

(3) *Filing and service of Statements of Account and royalty fees.* Earlier in these proceedings, NMPA/HFA took issue with the Copyright Office's rules regarding the service of Statements of Account and royalty fees where the compulsory licensee does not know the address of the copyright owner or where the Statement and fee are served by registered or certified mail but are returned to the sender. They urged that

compulsory licensees be required, in these cases, to file the Statement of Account and deposit the royalty fee in the Copyright Office for the benefit of the copyright owner. In the Notice accompanying the amended interim regulations, the Copyright Office concluded that "it would be appropriate to open the records of the Copyright Office to the filing of Monthly and Annual Statements of Account" (43 FR 44514), and amended the interim regulations accordingly. However, the Office did "not believe it would be proper to require the filing of statements of account in the Copyright Office in these cases." (43 FR 44514). Further, the Copyright Office felt that it would be "impossible for our Office, without specific statutory authority, to act as a depository for royalty fees owed to copyright owners." (43 FR 44514). In their Supplemental Statement dated January 31, 1979, NMPA/HFA suggested, in the alternative, that the regulations be—

• • • amended to make mandatory the filing of a notice with the Copyright Office by a compulsory licensee in the event the compulsory licensee knows the address of the copyright owner to be incorrectly stated in the Copyright Office records by reason of the return of mail sent to such address • • • If a payment to a copyright owner was included in the mail that had been so returned to a compulsory licensee, the notice filed by the compulsory licensee should so state that such payment has been returned. In such event, until the correct address of the copyright owner is ascertained, the regulations should require the filing of all monthly and annual statements of account with the Copyright Office and all royalty payments to be deposited by the compulsory licensee in an escrow account maintained by it for the benefit of the copyright owner. It is anticipated that this procedure will enable HFA in the course of its periodic examination of the Copyright Office's compulsory license filing register, to become aware of these situations and attempt to provide the correct addresses of copyright owners involved so payment may be properly made. (Supplemental Statement by the NMPA/HFA, January 31, 1979, pp. 41-42.)

The Copyright Office continues to believe that it would not be proper to require the filing of Statements of Account in the Copyright Office in these cases. In addition, it is beyond the Copyright Office's specific statutory authority under section 115 to require the maintenance of escrow accounts for receipt of royalty payments.

Paragraph (e)(3) of section 201.18 of our final regulations states:

If the Notice (of Intention) is sent by certified or registered mail to the last address

of the copyright owner shown by the records of the Copyright Office and is returned to the sender because the copyright owner is no longer located at that address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office • • •

Since, as stated in their Supplemental Statement, HFA plans to examine periodically our compulsory license filing register, the required submission to our Office, in these cases, of Notices of Intention plus the optional submission of Statements of Account should safeguard adequately the interests of music copyright owners.

(4) *Documentation.* Section 201.19(d) of the amended interim regulations requires that compulsory licensees keep "all records and documents necessary and appropriate" to support the information given in Statements of Account for a period of three years from the service of the Annual Statement. Throughout these proceedings, and most recently in their Statement dated November 24, 1978, HFA has requested the Copyright Office to extend this period to six years to take into account the possible application of State statutes of limitations which may apply to causes of action based on fraud. In response to their request, the Office studied the document retention requirements of various federal agencies and the possible application of State statutes to the mechanical compulsory license. After a thorough review of this question, the Copyright Office adheres to the position expressed in the Notice accompanying the interim regulations that "we do not believe that the mere possibility of such action warrants the very substantial extension proposed" (43 FR 44515). In its Statement dated November 24, 1978, HFA again requested that the regulations require that access to these records and documents be made available to the copyright owner for inspection. Here, too, the Copyright Office maintains the position expressed in the Notice accompanying the amended interim regulations that "we believe that rules governing access to business records (and, by implication, the consequences of refusal) are beyond our authority to establish. In any event, judicial procedures—and possible other alternatives—are available to copyright owners to secure such access." (43 FR 44515.)

*Final Regulation.* In consideration of the foregoing, Part 201 of 37 CFR, Chapter II is amended 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 coowners. In such cases, the service of a Notice of Intention on any one of the coowners under paragraph (e)(2) of this section shall be sufficient with respect to all coowners.

(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:

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

(ii) The 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 except where it is the only address that can be used in that geographic location;

(iii) A statement of the nature of each and every business organization that the person or entity intending to obtain the compulsory license will use for the purpose of conducting the business of making and distributing phonorecords under the license (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 each entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity intending to exercise the compulsory license. If a corporate entity is named in response to this paragraph (C), then: If that corporation is registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall so state; if that corporation is not so registered, 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 that corporation;

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

(v) 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;

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

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

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

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

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

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

(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 \$6.00. 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 \$4.00, a Certificate of Filing will be provided to the sender.

(2) If the registration or other public records of the Copyright Office do not 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.

(3) If the Notice is sent by certified or registered mail to the last address for the copyright owner shown by the records of the Copyright Office and is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office. Notices of Intention submitted for filing under this paragraph (e)(3) shall be submitted to the Licensing Division of the Copyright Office, and shall be accompanied by a brief statement that the Notice was sent to the last address for the copyright owner shown by the records of the Copyright Office but was returned, and by appropriate evidence that it was sent by certified or registered mail to that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, as shown by the evidence mentioned above, as the date of filing. A written acknowledgement of receipt and filing will be provided to the sender. No filing fee will be required in the case of Notices filed under this paragraph (e)(3). Upon request and payment of a fee of \$4.00, a Certificate of Filing will be provided to the sender.

§ 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 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

coowners. In such cases, the service of a Statement of Account, on one coowner under paragraph (e)(7) or (f)(7) of this section shall be sufficient with respect to all coowners.

(4) For the purposes of this section, a "compulsory licensee" is a person or entity exercising the compulsory license to make and distribute phonorecords of nondramatic musical works as provided under section 115 of title 17 of the United States Code, as amended by Pub. L. 94-553.

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

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

(ii) In the case of phonorecords relinquished from possession for purposes of sale without a privilege of returning unsold phonorecords for credit or exchange, at the time at which the compulsory licensee actually first parts with possession;

(iii) In the case of phonorecords relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange: (A) At the time when revenue from a sale of the phonorecord is "recognized" by the compulsory licensee; or (B) nine months from the month in which the compulsory licensee actually first parted with possession, whichever occurs first. For these purposes, a compulsory licensee shall be considered to "recognize" revenue from the sale of a phonorecord when sales revenue would be recognized in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board, whichever would cause sales revenue to be recognized first.

(6) A "phonorecord reserve" comprises the number of phonorecords, if any, that have been relinquished from possession for purposes of sale in a given month accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have not been considered voluntarily distributed during the month in which

the compulsory licensee actually first parted with their possession. The initial number of phonorecords comprising a phonorecord reserve shall be determined in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board.

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

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

(1) If the number of phonorecords for which revenue is being "recognized" is smaller than the number of phonorecords comprising the earliest eligible phonorecord reserve, this phonorecord reserve shall be reduced by the number of phonorecords for which revenue is being "recognized." Subject to the time limitations of subparagraph (B) of this § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(2) If the number of phonorecords for which revenue is being "recognized" is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve and continuing to the next succeeding phonorecord reserves, that are completely offset by phonorecords for which revenue is being "recognized." Said licensee shall then reduce the next succeeding phonorecord reserve by the number of phonorecords for which revenue is being "recognized" that have not been used to eliminate a

phonorecord reserve. Subject to the time limitations of subparagraph (B) of this § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

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

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

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

(i) If the number of phonorecords that are returned during the month covered by the Monthly Statement is smaller than the number comprising the earliest eligible phonorecord reserve, the compulsory licensee shall reduce this phonorecord reserve by the total number of returned phonorecords. Subject to the time limitations of subparagraph (B) of this § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(ii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve, and continuing to the next succeeding phonorecord reserves, that are

completely offset by returned phonorecords. Said licensee shall then reduce the next succeeding phonorecord reserve by the number of returned phonorecords that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of subparagraph (B) of this § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(iii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is equal to or is greater than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall eliminate all eligible phonorecord reserves. Where said number is greater than the total number of phonorecords comprising all eligible phonorecord reserves, said compulsory licensee shall establish a "negative reserve balance," as defined in paragraph (a)(7) of this section.

(3) Except where a negative reserve balance exists, a separate and distinct phonorecord reserve shall be established for each month during which the compulsory licensee relinquishes phonorecords from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section. In accordance with subparagraph (B) of this § 201.19(a)(5)(iii), any phonorecord remaining in a particular phonorecord reserve nine months from the month in which the particular reserve was established shall be considered "voluntarily distributed"; at that point, the particular monthly phonorecord reserve shall lapse and royalties for the phonorecords remaining in it shall be paid as provided in paragraph (e)(4)(ii) of this section.

(4) Where a negative reserve balance exists, the aggregate total of phonorecords comprising it shall be accumulated into a single balance rather than being separated into distinct monthly balances. Following the establishment of a negative reserve balance, any phonorecords relinquished from possession by the compulsory licensee for purposes of sale or otherwise, shall be credited against such negative balance, and the negative reserve balance shall be reduced accordingly. The nine month limit provided by subparagraph (B) of this § 201.19(a)(5)(iii) shall have no effect upon a negative reserve balance; where a negative reserve balance exists, relinquishment from possession of a phonorecord by the compulsory licensee

at any time shall be used to reduce such balance, and shall not be considered a "voluntary distribution" within the meaning of paragraph (a)(5) of this section.

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

(d) *Situations in Which a Compulsory Licensee is Barred From Maintaining Reserves.* Notwithstanding any other provisions of this section, in any case where, within three years before the phonorecord was relinquished from possession, the compulsory licensee has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar action, to have failed to pay such royalties, that compulsory licensee shall be considered to have "Permanently parted with possession" of a phonorecord made under the license at the time at which that license at the time<sup>3</sup> at which that licensee actually first parts with possession. For these purposes the "compulsory licensee," as defined in § 201.19(a)(4), shall include:

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

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

(e) *Monthly Statements of Account.—*

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

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

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

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

distributing phonorecords;

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

(iv) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the Monthly Statement and the name of the author or authors of such work or works, if known;

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

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

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

(3) *Specific Content of Monthly Statements: Identification and Accounting of Phonorecords.* (i) The information called for by paragraph (e)(2)(v) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information:

(A) The number of phonorecords made during the month covered by the Monthly Statement;

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

relinquished from possession for purposes other than sale;

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

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

returned to the compulsory licensee for credit or exchange; or

placed in a phonorecord reserve (except that if a negative reserve balance exists give

<sup>3</sup>Error; lines should read:

"the time at which that licensee actually first parts with possession. For these"

either the number of phonorecords added to the negative reserve balance, or the number of phonorecords relinquished from possession that have been used to reduce the negative reserve balance);

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

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

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

(B) The names of the principal recording artist or group engaged in rendering the performances fixed on the phonorecords;

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

(D) Each phonorecord configuration involved (for example: single disk, long-playing disk, cartridge, cassette, reel-to-reel).

**(4) Royalty Payment and Accounting.**

(i) The total royalty called for by paragraph (e)(2)(vi) of this section shall, as specified in section 115(c)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, be payable for every phonorecord "voluntarily distributed" during the month covered by the Monthly Statement.

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

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

*Step 2: Subtract the number of phonorecords reserved.* This involves deducting, from the subtotal arrived at in

Step 1, the number of phonorecords that have been placed in the phonorecord reserve for the month covered by the Monthly Statement. The number of phonorecords reserved is determined by multiplying the subtotal from Step 1 by the percentage reserve level established under GAAP. This step should be skipped by a compulsory licensee barred from maintaining reserves under paragraph (d) of this section.

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

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

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

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

(c) *Reduction of negative reserve balance.* If, in the month covered by the Monthly Statement, the aggregate reserve balance for all previous months is a negative amount, the number of phonorecords relinquished from possession by the compulsory during that <sup>4</sup> month and used to reduce the negative reserve balance is subtracted from the Step 3 subtotal.

*Step 5: Multiply by the statutory royalty rate.* The total monthly royalty payment is obtained by multiplying the subtotal from Step 3, as adjusted if necessary by Step 4, by the statutory royalty rate of 2½ cents or ¼ cent per minute or fraction of playing time, whichever is larger.

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

(5) *Clear Statements.* The information required by paragraphs (e) (2) and (3) of

this section involves intelligible, legible, and unambiguous statements in the Monthly Statements of Account itself and without incorporation of facts or information contained in other documents or records.

(6) *Oath and Signature.* Each Monthly Statement of Account shall include the handwritten signature of the compulsory licensee. If that compulsory licensee is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that compulsory licensee is a partnership, the signature shall be that of a partner. The signature shall be accompanied by: (i) The printed or typewritten name of the person signing the Monthly Statement of Account; (ii) the date of signature; (iii) if the compulsory licensee is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Monthly Statement of Account; (iv) a certification of the capacity of the person signing; and (v) the following statement:

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

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

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

(B) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under this § 202.19(e)(7)(ii).

<sup>4</sup>Error: line should read:  
"possession by the compulsory licensee during that"

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

(D) No filing fee will be required in the case of Monthly Statements of Account submitted to the Copyright Office under this § 201.19(e)(7)(ii). Upon request and payment of a fee of \$4.00, a Certificate of Filing will be provided to the sender.

(iii) A separate Monthly Statement of Account shall be served for each month during which there is any activity relevant to the payment of royalties under this section 115 of title 17, United States Code, as amended by Pub. L. 94-553, and under this section. The Annual Statement of Account identified in paragraph (f) of this section does not replace any Monthly Statement of Account.

(f) *Annual Statements of Account.*—

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

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

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

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

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

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

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

(B) If the compulsory licensee is a corporation that is not registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the

Annual Statement shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation.

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

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

(v) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the Annual Statement and the name of the author or authors of such work or works, if known;

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

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

(viii) The total royalty payable for the fiscal year covered by the Annual Statement computed in accordance with the requirements of this section, together with a statement of account showing in detail how the royalty was computed. For these purposes, the applicable royalty as specified in section 115(c)(2) of title 17 of the United States Code, as amended by Pub. L. 94-553, shall be payable for every phonorecord "voluntarily distributed" during the fiscal year covered by the Annual Statement;

(ix) The total sum paid under Monthly

Statements of Account by the compulsory licensee to the copyright owner being served with the Annual Statement during the fiscal year covered by the Annual Statement; and

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

(4) *Specific Content of Annual Statements: Identification and Accounting of Phonorecords.* (i) The information called for by paragraph (f)(3)(vii) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information separately stated and identified for each phonorecord configuration (for example, single disk, long playing disk, cartridge, cassette, or reel-to-reel) made:

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

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

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

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

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

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

(ii) If the information given under paragraphs (A) through (F) of this

<sup>5</sup>Error; line should read:  
"under section 115 of title 17, United"

§ 201.19(f)(4)(i) does not reconcile, the Annual Statement shall also include a clear and detailed explanation of the difference. For these purposes, the information given under such paragraphs shall be considered not to reconcile if, after the number of phonorecords given under paragraphs (B), (C), (D), and (E) are added together and that sum is deducted from the number of phonorecords given under paragraph (A), the result is different from the amount given under paragraph (F).

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

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

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

We have examined the attached "Annual Statement of Account Under Compulsory License For Making and Distributing Phonorecords" for the fiscal year ended (date) of (name of the compulsory licensee) applicable to phonorecords embodying (title or titles of nondramatic musical works embodied in phonorecords made under the compulsory license) made under the provisions of section 115 of title 17 of the United States Code, as amended by Pub. L. 94-553, and applicable regulations of the United States Copyright Office. Our examination was made in accordance with generally accepted auditing standards and accordingly, included such other auditing<sup>6</sup>

procedures as we considered necessary in the circumstances.

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

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(City and State of Execution)

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(Signature of Certified Public Accountant or CPA Firm)

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Certificate Number

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Jurisdiction of Certificate

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(Date of Opinion)

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

(7) *Service.* (i) Each Annual Statement of Account shall be served on the copyright owner to whom or which it is directed by certified mail or by registered mail on or before the twentieth day of the third month following the end of the fiscal year covered by the Annual Statement. It shall not be necessary to file a copy of the Annual Statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (e)(7) of this section.

(ii) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (f)(3)(viii) of this section is greater than the amount stated in that Annual Statement under paragraph (f)(3)(ix) of this section, the difference between such amounts shall be delivered to the

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

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

(B) The Copyright Office will not accept any royalty fees submitted with Annual Statements of Account under this § 202.19(f)(7)(iii).

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

(D) No filing fee will be required in the case of Annual Statements of Account submitted to the Copyright Office under this § 201.19(f)(7)(iii). Upon request and payment of a fee of \$4, a Certificate of Filing will be provided to the sender.

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

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

Dated: November 14, 1980.

David Ladd,  
Register of Copyrights.

Approved:

Daniel J. Boorstin,  
The Librarian of Congress.

[FR Doc. 80-37087 Filed 11-20-80; 2:45 am]

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<sup>6</sup>Error; line should read:

"accordingly, included such tests of the accounting records and such other auditing"