



ANNOUNCEMENT

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

INTERIM REGULATION

STATUTORY LICENSE FOR DIGITAL AUDIO RECORDING DEVICES AND MEDIA: INITIAL NOTICE OF DISTRIBUTION

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 92-6]

Statutory License for Digital Audio Recording Devices and Media: Initial Notice of Distribution

AGENCY: Copyright Office: Library of Congress.

ACTION: Interim regulation.

SUMMARY: This notice is issued to advise the public that the U.S. Copyright Office in the Library of Congress is adopting interim regulations to implement section 1003 of the Audio Home Recording Act of 1992, which creates a new statutory license under the Copyright Act, title 17 U.S.C. governing importation, manufacture, and distribution of digital audio recording devices and media. The Audio Home Recording Act imposes an obligation on persons who import and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium to file an initial notice, file quarterly and annual statements of account, and remit royalties to the Copyright Office. The effect of the interim regulation is to establish requirements governing the form and content of the Initial Notice of Distribution, which must be filed under section 1003(b) of the Act.

The regulation is issued on an interim basis in order to allow persons to invoke the statutory license immediately, while

permitting full public comment before the issuance of final regulations.

DATES: This interim regulation is effective November 25, 1992. Public comments on the interim regulation should be received on or before January 4, 1993.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue, SE., Washington, DC 20559.¹

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Effective October 28, 1992 the Audio Home Recording Act (AHRA), Public Law 102-563, 106 Stat. 4237, creates a new statutory license under the Copyright Act, title 17 U.S.C., which addresses the threat of copyright owners' lost sales and royalties when sound recordings are reproduced on digital audio home recordings. The AHRA provides three solutions to the longstanding problems presented by consumer devices that make near-perfect copies of digital sound recordings. It (1) provides consumers an exemption for private, noncommercial home recording of analog or digital sound recordings; (2) mandates that digital audio recorders restrict serial

copying by technological means, and (3) creates a new statutory license that manufacturers and importers of digital audio recorders obtain by filing an initial notice of distribution, by filing quarterly and annual statements of account, and by paying royalties upon distribution in the United States of digital audio recording devices and media.

The manufacture and importation of digital audio recording devices and media is subject to a statutory license. Section 1003(a) of the Audio Home Recording Act, provides as follows:

No person shall import into and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.

Section 1003(b) directs the filing of an initial notice:

The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.

The purpose of this interim regulation is to prescribe the time for filing, and the form and content of initial notices of distribution.

The initial notice filing provisions of section 1003(b) are part of the larger statutory scheme of licensing under which manufacturers and importers will be required to record or file other

information in the Copyright Office. The filing of quarterly and annual statements of account and payment of royalties will be addressed in a separate rulemaking proceeding, which will be instituted in the near future. Since the obligation to file an initial notice of distribution falls on the first manufacturer or importer to distribute digital audio devices or media following the passage of the AHRA, the regulation governing the filing of such notices is issued on an interim basis.

2. Time for Filing

Under these regulations the importer or manufacturer must file an initial notice for a digital audio product category or technology no later than 45 days after the commencement of the first distribution in the United States, on or after October 28, 1992. Subsequently, the importer or manufacturer must file a new initial notice for each new digital audio product or technology not previously distributed. Any initial notice must be filed no later than 45 days after the commencement of distribution in the United States of the new product category or technology. If a product category or technology were first imported and distributed and the same entity later manufactures and distributes that same product category or technology, the distributor would not need to file a new notice.

3. Form and Content

The Initial Notice of Distribution should be submitted on a form that is available on request from the Licensing Division of the Copyright Office without any charge. Forms may be requested by telephone by calling (202) 707-8150. A copy of the form is published in an appendix to this regulation.

Information given on the Initial Notice of Distribution should generally reflect facts as they exist on the date of filing. Amendments will be accepted to correct an error or omission. By contrast, where the ownership of an entity changes, a new Initial Notice should be filed by the new owner when it imports or manufactures and distributes any device or media under its name for the first time.

The statutory definition of a digital audio recording medium states clearly that blank discs and tapes are the targeted media. Thus prerecorded tapes and discs are ordinarily not covered by this regulation.

4. Public Comment

The public is invited to submit comments on the interim regulation on or before January 4, 1993.

5. Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office

takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.¹

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 201

Cable Television, Copyright, Digital audio statutory license.

Interim Regulations

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR chapter II in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 USC 702; 201.27 is also issued under Public Law 102-563.

2. Section 201.27 is added to read as follows:

§ 201.27 Initial Notice of Distribution of Digital Audio Recording Devices or Media.

(a) *General.* This section prescribes rules pertaining to the filing of an Initial Notice of Distribution in the Copyright Office as required by section 1003(b) of the Audio Home Recording Act of 1992, Public Law 102-563, title 17 of the United States Code, to obtain a statutory license to import and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium in the United States.

¹ The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act of 1976 (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits" (17 U.S.C. 706(b))). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

(b) *Definitions*—(1) *An Initial Notice of Distribution of Digital Audio Recording Devices or Media or Initial Notice* is a notice under section 1003(b) of the Audio Home Recording Act of 1992, Public Law 102-563, title 17 of the United States Code, which is required by that section to be filed in the Copyright Office by an importer or manufacturer of a digital audio recording device or digital audio recording medium who has not previously filed notice of the importation or manufacture for distribution of such device or medium in the United States.

(2) The *product category* of a device or medium is a general class of products made up of functionally equivalent digital audio recording devices or media with substantially the same use in substantially the same environment, including, for example, hand-held portable integrated combination units ("boomboxes"); portable personal recorders; stand-alone home recorders ("tape decks"); home combination systems ("rack systems"); automobile recorders; configurations of tape media (standard cassettes or microcassettes); and configurations of disc media such as 2½," 3" and 5" discs.

(3) The *technology* of a device or medium is a product type distinguished by different technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassette, (DCC), or recordable compact discs, including minidisks (MD).

(4) The terms *digital audio recording device*, *digital audio recording medium*, *distribute*, *manufacture*, and *transfer price*, have the meanings of the same terms as they are used in section 1001 of the Copyright Act, title 17 of the United States Code, as amended by Public Law 102-563.

(c) *Forms.* An Initial Notice form may be obtained from the Copyright Office free of charge, by contacting the Licensing Division of the Copyright Office, Washington, DC 20557.

(d) *Filing Deadline.* Initial Notices shall be filed in the Copyright Office no later than 45 days after the commencement of the first distribution of digital audio recording devices or digital audio recording media in the United States, on or after October 28, 1992. A manufacturer or importer shall file an Initial Notice within 45 days of the first distribution for each new product category and each new technology that the manufacturer or importer has not reported in a previous Initial Notice.

(e) *Content of Initial Notices.* An Initial Notice of Distribution of Digital

Audio Recording Devices or Media shall be identified as such by prominent caption or heading, and shall include the following:

(1) The designation "Importer" or "Manufacturer," or both, whichever is applicable, followed by the full legal name of the importer or manufacturer of the digital audio recording device or medium, or of the party named is a partnership, the name of the partnership followed by the name of at least one individual partner;

(2) Any trade or business name or names, trademarks, or other indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such digital audio recording device or medium in the United States;

(3) The full United States mailing address of the importer or manufacturer, and the full business address, if different;

(4) The product category and technology of the devices or media imported or manufactured;

(5) The first date (day, month, and year) that distribution commenced, or is to commence;

(6) The signature of an appropriate officer, partner, or agent of the importer or manufacturer, as specified by the Initial Notice form; and

(7) Other information relevant to the importation or manufacture for distribution of digital audio recording devices or media as prescribed on the Initial Notice form provided by the Copyright Office.

(f) *Amendments.* (1) The Copyright Office will record amendments to Initial Notices submitted to correct an error or omission in the information given in an earlier Initial Notice. An amendment is not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice.

(2) An amendment shall: (i) Be clearly and prominently identified as an "Amendment to an Initial Notice of Distribution of Digital Audio Recording Devices or Media;" (ii) Identify the specific Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; (iii) clearly specify the nature of the amendment to be made; and (iv) be signed and dated in accordance with this section.

(3) The recordation of an amendment under this paragraph shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(g) *Recordation.* (1) The Copyright Office will record the Initial Notices and amendments submitted in accordance with this section by placing them in the appropriate public files of the Office. The Copyright Office will advise manufacturers and importers of errors or omissions appearing on the face of documents submitted to it, and will require that any such obvious errors or omissions be corrected before the documents will be recorded. However, recordation by the Copyright Office shall establish only the fact and date thereof; such recordation shall in no case be considered a determination that the document was, in fact, properly prepared or that all of the regulatory requirements to satisfy section 1003 of title 17 have been met.

(2) No fee shall be required for the recording of Initial Notices. A fee of \$20 payable by personal or company check to the Register of Copyrights shall accompany any Amendment permitted by paragraph (f) of this section.

Dated: November 17, 1992.

Ralph Oman,
Register of Copyrights.
Approved:

James H. Billington,
The Librarian of Congress.

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