



ANNOUNCEMENT

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

INTERIM REGULATION

DIGITAL AUDIO RECORDING DEVICES AND MEDIA: STATEMENTS OF ACCOUNT

NEW

The following excerpt is taken from Volume 58, Number 33 of the *Federal Register* for Monday, February 22, 1993 (pp. 9544-9550)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 92-8]

Digital Audio Recording Devices and Media: Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation.

SUMMARY: This document is issued to advise the public that the U.S. Copyright Office in the Library of Congress is adopting interim regulations to implement portions of the Audio Home Recording Act of 1992. Section 1003 imposes an obligation to make royalty payments 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. In addition to remitting the royalties to the Copyright Office, the importer or manufacturer must file Statements of Account with the Copyright Office. The effect of this interim regulation is to establish requirements governing the filing dates, frequency of filing, and content of the Statements of Account that must be filed pursuant to this Act.

DATES: This interim regulation is

effective February 22, 1993. Public comments on the interim regulation should be received on or before March 24, 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 20557.

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 new statutory obligations in a new chapter 10 of title 17 U.S.C. relating to digital audio recording devices and media. The AHRA provides three solutions to the policy problems presented by consumer products that make nearly perfect copies of digital audio recordings. It (1) provides consumers an exemption for private noncommercial home recording of analog or digital audio recordings, (2) mandates that digital audio recorders restrict serial copying by technological means, and (3) requires that manufacturers and importers of digital audio recorders and media must file an initial notice of distribution, file statements of account, and pay royalties upon distribution in the United States of

digital audio recording devices and media.

Section 1003(a) of the Home Audio Recording Act of 1992 provides that: 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 of distribution of digital audio recording devices or media in the United States. The Copyright Office issued interim regulations in a separate proceeding (RM 92-6) governing the filing of initial notices of distribution. 57 FR 55464 (November 25, 1992). Initial Notice of Distribution forms are 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.

The current proceeding relates to the filing of Statements of Account and payment of royalties due.

Paragraph (c)(1) of section 1003 provides that: Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such

¹Error: line should read;
"Media: Statements of Account"

²Error: line should read;
"SUMMARY: This notice is issued to"

³Error: line should read;
"Recording Act of 1992 provides that as follows: No"

distribution as the Register shall prescribe by regulation.

Royalty payments must be calculated in accordance with section 1004, and remitted to the Copyright Office pursuant to section 1003(c)(3).

Because the Audio Home Recording Act and its obligations relating to distribution of digital audio recording media and devices went into effect upon enactment, we issue the regulations on an interim basis. This permits parties who wish to satisfy the obligations of the Act on or after its effective date to do so, while permitting full public comment on the regulations. Final regulations will be issued after we have had full comment on the interim regulations.

2. Explanation of Interim Regulations

The interim regulations are for the most part self-explanatory. Of special note, however, are the following provisions:

a. Forms. The interim regulations prescribe use of a standard form for quarterly and annual statements of account. Four filings are required each fiscal or calendar year. The fourth quarter information shall be reported on the annual statement of account in addition to the information concerning the annual accumulation. The use of prescribed forms will assist manufacturers and importers in understanding and meeting their obligations under the Act, and record companies and music copyright owners in reviewing the information reported. In view of the novelty of the obligations to all persons involved, we plan to review the forms and may amend them in the light of future experience.

b. Filing dates and basis of filing. Statements of Account may be filed on either a calendar year or fiscal year basis at the election of the manufacturer or importer. Whichever filing basis is elected, the election stands for three years and may be changed for subsequent filings only by written request to the Copyright Office at least 60 days before the proposed effective date, which request must be approved by the Office in order to become effective.

Quarterly statements of account shall be filed at intervals of three months for the first three quarters of the calendar year or fiscal year cycle. As a transitional measure, no separate quarterly statement is required for the last part of 1992. The first quarterly statement shall cover the period from October 28, 1992 to the end of at least one full quarter. The first quarterly statement is due 45 days following the end of the first full quarter after October

28, 1992, or by May 15, 1993, whichever is later. Each subsequent quarterly statement is due 45 days following the end of the relevant quarter.

Annual statements of account, as noted, shall also contain the information relating to the fourth quarter, in addition to the accumulation for the year. Annual statements are due on or before two months after the close of the calendar or fiscal year covered by the statement.

c. Content of Statements of Account. These interim regulations aim to elicit information that satisfies the purpose of the statute. Accordingly, they reflect the view that quarterly statements of account should provide basic information regarding statutory royalties to be paid for that quarter and certain information pertinent to annual reconciliation of the quarterly statement, while annual statements of account should be somewhat more detailed and sufficient to ensure that statutory royalties have been paid on all digital audio recording products manufactured, imported, and distributed during the year.

Thus, although the interim regulations accept the possibility that royalties may not be reconciled until the end of the accounting year and that additional payments may be required at that time, they also provide that the delayed payment of such royalties does not require the copyright owner to forego any right, relief, or remedy which may be available under law.

d. Corrections and refunds. The interim regulations provide for refunds in connection with overpayments accompanying Annual Statements of Account. Refunds would not be made for overpayments accompanying Quarterly Statements of Account, since reconciliation of the appropriate royalty for the relevant accounting year is made in the Annual Statement of Account. Similarly, credits for returned digital audio recording devices can be taken as discussed below, but refunds will not be made in lieu of the credit.

The interim regulations do allow corrections of Quarterly (as well as Annual) Statements of Account to correct significant errors in underpayments of royalties. The scheme of the interim regulations is that errors resulting in relatively small underpayments can be corrected in the relevant Annual Statement of Account without the necessity of a supplemental quarterly filing, but that manufacturing parties may conclude that significant underpayments must be corrected as soon as they are discovered, without waiting until the filing of the Annual Statement of Account. The interim

regulations accordingly allow for such correction in the case of significant underpayments.

e. Interest. Consistent with the Copyright Office position respecting royalties for the cable and satellite carrier licenses, (see 54 FR 14217 (1989)) we are imposing interest on underpayments and late payments of royalties due under the statutory obligation to remit royalties relating to manufacture and distribution or importation and distribution of digital audio recording devices and media. Manufacturers or importers submitting royalty payments in an untimely fashion should include the proper interest charge with their payments.

Under the AHRA, copyright owners receive compensation for private, noncommercial copying of their works while at the same time manufacture and distribution of digital audio recording devices and media is not impeded, if the obligations of the Act are satisfied. If royalty payments are not made on time, in accordance with the terms of the Act, the goal of compensation is frustrated and copyright owners suffer from loss of the present value of funds. The Copyright Office therefore concludes that it is consistent with the intention of Congress and within its authority to establish regulations requiring interest payments on underpaid or late royalties pursuant to the statutory obligations relating to digital audio recording devices and media.

The interest rate is that quoted in the Current Value of Funds to Treasury, as published quarterly in the Federal Register, and in Section 8025.40 of the Treasury Financial Manual, Department of the Treasury, Financial Management Service Bulletin, in effect on the first business day after the close of the relevant filing deadline for that accounting period. Manufacturers and importers must perform their own interest charge calculations but may also obtain the proper interest rate for the applicable period(s) by contacting the Licensing Division, United States Copyright Office, 101 Independence Avenue SE., Washington, DC 20557, Telephone: (202) 707-8150. No interest will be required where the interest due on a particular royalty sum paid by a manufacturer or importer is less than or equal to five dollars (\$5.00).

f. Credits for returns of recording devices. The regulations permit a period of no more than two years during which manufacturers and importers may take a credit for digital audio recording devices that are returned as unsold or defective. That is, the credit may be taken in the first Annual Statement of Account covering the actual period

when the recording devices were returned, or in the next succeeding Annual Statement of Account. A credit may also be taken for digital audio recording devices that are never distributed in the United States, if the devices were originally imported for U.S. distribution and royalties paid on such devices. However, if the devices are later reimported and distributed, the statutory amount must be repaid and the reimportation must be reflected on the statement of account. Refunds will not be issued in connection with adjustments that are reflected as credits.

g. Access to Statements of Account. Pursuant to section 1003(c)(2) quarterly and annual statements of account will not be made part of the public records, nor disclosed to the general public, directly or indirectly. Specific regulations governing confidential access by interested copyright parties, as defined in the AHRA, will be issued later in a separate proceeding. Pending that proceeding, these interim regulations deny all public access for examination and copying of quarterly and annual statements of account.

h. Regulatory Flexibility Act Statement. 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 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 the 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 businesses.

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 (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.

List of Subjects in 37 CFR Part 201

Copyright, Digital audio recording products.

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 U.S.C. 702; § 201.28 is also issued under Public Law 102-563, 106 Stat. 4237.

2. Section 201.28 is added to read as follows:

§ 201.28 Statements of Account for digital audio recording devices or media.

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by sections 1003(c) and 1004 of title 17 of the United States Code, as amended by Pub. L. 102-563, with respect to the manufacture and distribution or importation and distribution of digital audio recording devices and media in the United States. The manufacturing party as defined in this section is obligated to file statements of account and remit royalties to the Copyright Office.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) An *Annual Statement of Account* is a cumulative statement accompanying annual royalty payments pursuant to 17 U.S.C. 1003 which is required to be filed no later than two months after the close of the accounting period covered by the Annual Statement.

(2) The term *digital audio recording product* means digital audio recording devices and digital audio recording media.

(3) The *product category* of a device or medium is a general class of products made up of functionally equivalent digital audio recording products 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", or 5" discs.

(4) The *technology* of a device or medium is a digital audio recording product type distinguished by different

technical processes for digitally recording musical sounds, such as digital audio tape recorders (DAT), digital compact cassette (DCC), or different disc-based technologies such as minidisc (MD).

(5) The *manufacturing party* is any person or entity who manufactures and distributes or imports and distributes any digital audio recording device or digital audio recording medium in the United States.

(6) A *Quarterly Statement of Account* is a statement accompanying royalty payments pursuant to 17 U.S.C. 1003, which is required to be filed on a quarterly basis, three times each accounting year and, in each case, no later than 45 days after the close of the quarterly period covered by the Statement.

(7) The terms *digital audio recording device*, *digital audio recording medium*, *distribute*, *manufacture*, *transfer price*, and *serial copying*, have the meanings set forth in section 1001 of title 17 of the United States Code, as amended by Pub. L. 102-563.

(c) *Accounting periods and filing deadlines.* (1) *Election of filing basis.* Statements of Account may be filed on either a calendar or fiscal year basis at the election of the manufacturing party. The initial election of a calendar or fiscal year basis must be made when filing the first Quarterly Statement of Account by appropriate designation on the form submitted. If a fiscal year basis is elected, the specific fiscal year accounting period must be designated on the initial and each successive Quarterly or Annual Statement of Account. The election of a basis of filing shall endure for a term of three years and may be changed only upon application at least 60 days before the end of the third accounting year period (or any later period) to the Register of Copyrights. The change in filing basis must be approved by the Register of Copyrights.

(2) *Quarterly filings.* Quarterly Statements of Account shall cover a three-month period corresponding to the calendar or fiscal year of the manufacturing party and shall be filed no later than 45 days after the close of the period covered by the statement. As a transitional measure, however, no separate quarterly statement is required for the last part of 1992. The first quarterly statement submitted in 1993 shall cover the entire period since October 28, 1992 and shall be submitted within 45 days following the end of the first full quarter after October 28, 1992, or by May 15, 1993, whichever is later. For each calendar or fiscal accounting year, quarterly filings shall be made for

the first three quarters of the year. The appropriate royalty payment shall accompany the quarterly filing.

(3) *Annual statements.* Annual Statements of Account shall cover the fourth quarter of an accounting year and the cumulation of the entire year corresponding to the calendar or fiscal accounting year elected and shall be filed no later than two months after the close of the period covered by the statement. As a transitional measure, however, the first Annual Statement of Account filed after October 28, 1992, is not due until March 1, 1994, or later depending upon the basis of filing elected. The first Annual Statement of Account shall cover the entire period since October 28, 1992. The appropriate royalty payment shall accompany the Annual Statement of Account, covering royalties due for the fourth quarter of the accounting period and any additional royalties that are due because of adjustments in the cumulative amounts of devices or media distributed during the relevant accounting year.

(4) *Early or late filings.* Statements of Account and royalty fees received before the end of the particular accounting period covered by the statement will not be processed by the Office. The Statement must be filed after the close of the relevant accounting period. Statements of Account and royalty fees received after the 45-day deadline for Quarterly Statements or the two-month deadline for Annual Statements will be accepted for whatever legal effect they may have, if any.

(d) *Forms.* (1) Each Quarterly or Annual Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of the copyright royalty fee shall be in accordance with the procedures set forth in the forms and this section. Copies of the Statements of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, DC 20557.

(2) The forms prescribed by the Copyright Office are designated Quarterly Statement of Account for Digital Audio Recording Products and Annual Statement of Account for Digital Audio Recording Products.

(e) *Contents of Quarterly Statements of Account.* (1) *Quarterly period and filing.* Any Quarterly Statement of Account shall cover the full quarter of the calendar or fiscal accounting year for the particular quarter for which it is filed. A separate Quarterly Statement of

Account shall be filed for each quarter of the first three quarters of the accounting year during which there is any activity relevant to the payment of royalties under section 1004 of title 17, United States Code, as amended by Pub. L. 102-563, and under this section. The Annual Statement of Account identified in paragraph (f) of this section incorporates the fourth quarter of the accounting year.

(2) *General content.* Each Quarterly Statement of Account shall be clearly and prominently identified as a "Quarterly Statement of Account for Digital Audio Recording Products" and shall include a clear statement of the following information:

(i) A designation of the period, including the beginning and ending day, month, and year of the period covered by the quarter;

(ii) A designation of the calendar or fiscal year annual reporting period;

(iii) The full legal name of the manufacturing party together with the fictitious or assumed name, if any, used by such person or entity for the purpose of conducting the business of manufacturing and distributing or importing and distributing digital audio recording products;

(iv) A designation of the manufacturing party status, i.e., "Manufacturer," "Importer," or "Manufacturer and Importer";

(v) The full mailing address of the manufacturing party, including a specific number and street name or rural route of the place of business of this person or entity. 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;

(vi) The designation "product category", together with the product category of the digital audio recording products manufactured and distributed or imported and distributed by the manufacturing party during the quarter covered by the Statement;

(vii) The designation "technology," together with the technology of the digital audio recording products manufactured and distributed or imported and distributed by the manufacturing party during the quarter covered by the Statement;

(viii) The designation "model number," followed by the model (or, in the case of media, series) numbers of the digital audio recording products manufactured and distributed or imported and distributed by the manufacturing party during the quarter covered by the Statement;

(ix) For each digital audio recording product manufactured and distributed

or imported and distributed by the manufacturing party during the quarter covered by the Statement, a detailed statement of all the information called for in paragraph (e)(3) of this section

(x) A computation of the total royalty payable for the quarter covered by the Statement; and

(xi) The name, address, business title, and telephone number of the individual or individuals to be contacted for information or questions concerning the content of the Statement of Account.

(3) *Specific content of quarterly statements: Enumeration and accounting of digital audio recording products.* The Quarterly Statement of Account shall, with respect to each digital audio recording product manufactured and distributed, or imported and distributed, by the manufacturing party for the period covered by the quarter, include the following information:

(i) The number and price of digital audio recording devices distributed as physically integrated units;

(ii) If the royalty amount is reduced pursuant to section 1004(a)(2) of Public Law 102-563, the number and price of any physically-integrated units first distributed prior to this quarter;

(iii) The number and price of digital audio recording devices distributed as separate components according to the following:

(A) In the case where substantive similar separate components have distributed separately at any time during the previous four quarters, the average transfer price of such devices during those quarters; or

(B) In the case where such separate components have not been distributed separately at any time during the preceding four quarters, the proportional value of such devices to the combination as a whole;

(iv) The total number of digital audio recording products, by device and medium, manufactured and distributed;

(v) The total number of digital audio recording products, by device and medium, imported and distributed; and

(vi) The designation "transfer price," followed by the transfer price of all digital audio recording products, as specified in paragraph (e)(4) of this section.

(4) *Royalty payments and accounting.* (i) The royalty payments specified in section 1004 of title 17 of the United States Code, as amended by Pub. L. 102-563 shall accompany the Quarterly Statement of Account and shall be payable on distribution by the manufacturer or importer of the particular digital audio recording product item. No royalty is paye

redistribution of the same product item unless a credit has been taken for such items. Where royalties are payable for the period covered by the statement, the royalty accounting statement shall contain the following information:

(A) The total number of digital audio recording media distributed multiplied by the statutory royalty rate of three percent (3%) of the transfer price;

(B) The total number of digital audio recording devices for which the statutory royalty rate of two percent (2%) of the transfer price is payable multiplied by such percentage rate of the transfer price;

(C) The total number of digital audio recording devices for which the statutory maximum royalty is limited to eight dollars (\$8.00), multiplied by such eight dollar amount;

(D) The total number of digital audio recording devices for which the statutory maximum royalty is limited to twelve dollars (\$12.00), multiplied by such twelve dollar amount; and

(E) The total number of digital audio recording devices for which the statutory minimum royalty is limited to one dollar (\$1.00), multiplied by such one dollar amount.

(i) The amount of the royalty payment shall be calculated in accordance with the instructions on the relevant Statement of Account form.

(5) *Clear statements.* The information required by this section shall be set forth in an intelligible, legible, and unambiguous manner in the Quarterly Statement of Account itself without incorporation by reference of facts or information contained in other documents or records.

(6) *Oath and signature.* Each Quarterly Statement of Account shall include the handwritten signature of the manufacturing party. If the manufacturing party is a corporation, the signature shall be that of a duly authorized officer of the corporation; if the manufacturing party 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 Quarterly Statement of Account;

(ii) The date the document is signed;

(iii) If the manufacturing party is a partnership or corporation, the title or official position held in the partnership or corporation;

(iv) The following certification:

I certify that I have examined this Quarterly Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and accurate to the best of my knowledge, information, and belief, and are made in good faith.

(f) *Content of Annual Statements of Account.* (1) *Combined fourth quarter and annual filing.* The Annual Statement of Account shall cover the fourth quarter of an accounting year and the cumulation of the entire year corresponding to the calendar or fiscal year elected. The fourth quarter portion of the Annual Statement of Account shall contain the information prescribed in paragraphs (e)(1) through (e)(4) of this section.

(2) *General content.* An Annual Statement of Account shall be clearly and prominently identified as an "Annual Statement of Account for Digital Audio Recording Products," and shall include a clear statement of the following information:

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

(ii) The full legal name of the manufacturing party, together with the fictitious or assumed name, if any, used by such person or entity for the purpose of conducting the business of manufacturing and distributing, or importing and distributing, digital audio recording devices and media;

(iii) A designation of the manufacturing party status, *i.e.*, "Manufacturer," "Importer," or "Manufacturer and Importer";

(iv) A statement of the nature of the business organization used by the manufacturing party in connection with the manufacture and distribution or importation and distribution of digital audio recording devices and media (for example, a corporation, a partnership, or an individual proprietorship);

(v) The full address, including a specific number and street name or rural route, or place of business of the manufacturing party. 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;

(vi) The total number, by product category or product categories, of the digital audio recording devices and media manufactured and distributed or imported and distributed during the period covered by the Annual Statement;

(vii) The total number by technology or technologies of such digital audio recording devices and media manufactured and distributed or imported and distributed during the period covered by the Annual Statement;

(viii) The total number by model number of such devices and media manufactured and distributed or imported and distributed during the

period covered by the Annual Statement;

(ix) The total royalty payable for the calendar or fiscal accounting year covered by the Annual Statement computed in accordance with the instructions in the relevant Statement of Account form. For these purposes, the applicable royalty as specified in section 1004 of title 17 of the United States Code, as amended by Pub. L. 102-563, shall be payable for every digital audio recording device and medium distributed by the manufacturing party during the period covered by the Annual Statement;

(x) The total royalties previously paid under Quarterly Statements of Account by the manufacturing party during the period covered by the Annual Statement; and

(xi) For devices returned less than two years from the date of first distribution, the designation "credits" followed by the number of digital audio recording devices returned together with a statement of whether the devices were unsold, defective, or exported, and the amount credited for each device; and

(xii) A reconciliation of the cumulative and quarterly accounts, stating the total royalties payable, after deducting any appropriate credits or overpayments.

(3) *Clear statement.* Information provided should be intelligible, legible, and unambiguous, and should not incorporate by reference facts or information contained in other documents or records.

(4) *Signature and certification.*

(i) Each Annual Statement of Account shall include the handwritten signature of the manufacturing party. If the manufacturing party is a corporation, the signature shall be that of a duly authorized officer of the corporation; if the manufacturing party 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 the signature;

(C) If the manufacturing party 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.

(i)(A) Each Annual Statement of Account or any amended Annual Statement shall 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 for Digital Audio Recording Products" for the (fiscal) (calendar) year ended (date) of (name of the manufacturing party) applicable to devices and media manufactured and distributed under provisions of chapter 10 of title 17 of the United States Code, as amended by Pub. L. 102-563, and applicable regulations of the United States Copyright Office. Our examination was made in accordance with generally acceptable auditing standards, which included tests of the accounting records and such other auditing procedures as are considered necessary in the circumstances.

In our opinion the Annual Statement of Account referred to above presents fairly the number of digital audio recording devices and media and the transfer prices of such devices and media that were manufactured and distributed or imported and distributed by (name of the manufacturing party) during the (fiscal) (calendar) year ending (date) and the amount of royalties applicable thereto under the provisions of chapter 10 of title 17 of the United States Code on a consistent basis and in accordance with this law and the applicable regulations published thereunder.

(City and State of Execution)

(Signature of Certified Public Accountant or CPA Firm)

Certificate Number

Jurisdiction of Certificate

(Date of Opinion)

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

(5) *Filing dates and royalty payments.* (i) Each Annual Statement of Account shall be filed in the United States Copyright Office on or before two months after the close of the calendar or fiscal accounting year covered by the Annual Statement. An Annual Statement shall be filed for each year during which at least one Quarterly Statement was required to have been filed under section 1003(c)(1) of title 17, United States Code, as amended by Pub. L. 102-563.

(ii) In any case where the amount stated in the Annual Statement of Account pursuant to paragraph (f)(2)(ix) of this section is greater than the amount stated in the Annual Statement pursuant to paragraph (f)(2)(xii) of this section, the difference between such

amounts shall accompany the Annual Statement.

(6) *Documentation.* All manufacturing parties shall, for a period of at least three years from the date of filing 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 Statements and in Quarterly Statements filed during the calendar or fiscal accounting year covered by such Annual Statements.

(g) *Royalty Fee Payment.* Except in the case of an electronic payment, the royalty fee payable for the period covered by the Quarterly or Annual Statement of Account shall accompany that Statement of Account, and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or money order, payable to the Register of Copyrights, or in the form of a United States Treasury electronic payment. All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period and provided the amount of the royalty satisfies any minimum established by the Department of the Treasury.

(h) *Corrections, Supplemental Payments, and Refunds.* (1) *General.* Significant errors in the computation of the royalty payment accompanying a Quarterly Statement of Account that result in underpayment of royalties can be corrected upon compliance with the procedure established by paragraph (h)(3) below. An inadvertent or minor error in a Quarterly Statement of Account can be corrected in the Annual Statement of Account for the relevant accounting year. Corrections to Annual Statements of Account will be placed on record, and supplemental royalty fee payments will be received for deposit, or, as appropriate, refunds without interest will be issued in the following cases:

(i) Where, with respect to the accounting period covered by an Annual Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete; or

(ii) Where, for any reason except that mentioned in paragraph (b)(2), calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to Quarterly or Annual Statements of Account will not be placed on file, nor will supplemental

royalty fee payments be received for deposit, nor refunds be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended but changes (for example, digital audio recording media were exported) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request shall be made in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period. A request made by telephone or by telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, is received in the Copyright Office within the required 60-day period, and a written request meeting all the conditions of this paragraph (h)(3) is also received in the Copyright Office within 14 days after the end of such 60-day period;

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request, inclusion of the name of the manufacturing party and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of a request filed under paragraph (h)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information;

(B) In the case of a request filed under paragraph (h)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too large or too small, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 28 of the United States Code, made and signed in accordance with paragraph (e)(6) of this section. The affidavit or statement

describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations:

(iv)(A) All requests filed under this paragraph (b) of this section must be accompanied by a filing fee in the amount of \$20 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to the Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, or money order, payable to the Register of Copyrights, or by electronic payment. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (b) must be signed by the manufacturing party named in the Statement of Account, or the duly authorized agent of the manufacturing party, in accordance with paragraph (e)(6) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of an Annual Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the manufacturing party named in the Statement of Account without regard to the time limitations provided for in paragraph (b)(3)(i) of this section. In no case, however, will the Copyright Office pay interest on any royalty refunds made to manufacturing parties.

(vii) No refunds will be made for alleged overpayments accompanying Quarterly Statements of Account. Any such overpayment can be reconciled in the Annual Statement of Account for the relevant accounting year.

(viii) No refunds will be made in

connection with credits for returned digital audio recording devices.

(4) Following final processing, all requests submitted under this paragraph (h) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve manufacturing parties of their full obligations under title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(i) *Examination of Statements of Account by the Copyright Office.* (1) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division will examine the statement for obvious errors or omissions appearing on the face of the documents, and will require that any such obvious errors or omissions be corrected before final processing of the document is completed. If, as the result of communications between the Copyright Office and the manufacturer or importer, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case.

(2) Completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements of chapter 10 of title 17 of the United States Code have been satisfied.

(j) *Interest on Late Payments or Underpayments.* (1) Royalty fee payments submitted as a result of late or amended filings shall include interest,

which shall begin to accrue on the first day after the close of the period for filing Statements of Account for all late payments or underpayments of royalties for the digital audio recording statutory license occurring within that accounting period. The accrual period shall end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by the manufacturing party, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of actual receipt by the Copyright Office.

(2) The interest rate applicable to a specific accounting period shall be the Current Value of Funds rate, as published in the Federal Register in accordance with the Treasury Financial Manual, at 1 TFM 6-8025.40, in effect on the first business day after the close of the filing deadline for the relevant accounting period. The interest rate for a particular accounting period may be obtained by consulting the Federal Register for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(k) *Confidentiality of Statements of Account.* Public access will be denied to the Copyright Office files of Statements of Account for Digital Audio Recording Products. Access will only be granted to interested copyright parties in accordance with regulations prescribed by the Register of Copyrights pursuant to section 1003(c) of title 17 United States Code, as amended by Pub. L. 102-563.

Dated: February 9, 1993.

Ralph Oman,
Register of Copyrights.

Approved:
James H. Billington,
The Librarian of Congress.

[FR Doc. 93-3995 Filed 2-19-93; 8:45 am]
BILLING CODE 1410-08-01

