



# ANNOUNCEMENT

## INTERIM REGULATION WITH REQUEST FOR COMMENTS

### DIGITAL AUDIO RECORDING DEVICES AND MEDIA; STATEMENTS OF ACCOUNT

The following excerpt is taken from Volume 59, Number 21 of the Federal Register for Tuesday, February 1, 1994 (pp. 4586-4593)

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#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 92-8A]

Digital Audio Recording Devices and Media;  
Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

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**SUMMARY:** The Copyright Office is issuing interim regulations governing the administration of filings under the Audio Home Recording Act of 1992 (AHRA). This Act deals with rights with respect to digital audio recording technology, and are being referred to by the acronym (DART).

More specifically, parties 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, are obligated to pay royalties. In addition to sending the royalties to the Copyright Office, the importer or manufacturer must file with the Office Statements of Account that reflect the distribution of digital audio recording devices or media.

**DATES:** This interim regulation is effective February 1, 1994. Comments should be in writing and received on or before April 4, 1994.

**ADDRESSES:** If sent by mail, ten copies should be addressed to: Copyright Office,

Library of Congress, Department 17, Washington, D.C. 20540. If hand delivered, ten copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue, SE., Washington, D.C. 20540.

**FOR FURTHER INFORMATION CONTACT:** Marybeth Peters, Acting General Counsel, U.S. Copyright Office, Department 17, Library of Congress, Washington, D.C. 20540. Telephone (202) 707-8380.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This document relates to the filing of both quarterly and annual Statements of Account and payment of royalties due under the new DART provisions of the Copyright Code (17 U.S.C. Chap. 10). On February 22, 1993, we published interim regulations on this subject [58 FR 9544 (1993)] and we are now issuing superseding interim regulations.

It should be noted that the manufacturers and importers covered by the new law are subject to other requirements, in addition to those dealt with here. For example, an obligation to file initial notices to identify the product categories and technologies distributed in the United States is provided by 17 U.S.C. 1003(b), and regulations regarding the filing of initial notices of distribution were issued by the Copyright Office at 57 FR 55464 (1992). In addition,

manufacturers and importers of digital recording and interface devices must conform to the Serial Copy Management System or equivalent systems as described by 17 U.S.C. 1002<sup>1</sup> as a condition of distribution in the United States.

With respect to Statements of Account, paragraph (c)(1) of 17 U.S.C. 1003 provides:

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 and content as the Register shall prescribe by regulation, such quarterly and annual Statements of Account with respect to such distribution as the Register shall prescribe by regulation.

Royalty payments are to be calculated in accordance with 17 U.S.C. 1004 and sent to the Copyright Office under 17 U.S.C. 1003(c)(3).

Following issuance in the Federal Register of the 1993 interim regulation regarding Statement of Account filings, the Copyright Office published notice of an informal public meeting to discuss both the interim regulations [58 FR 29001 (1993)] and the initial edition of the quarterly Statement of Account form (DART/Q Form). The public meeting

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<sup>1</sup>See S. Rep. No. 294, 102d Cong., 2d Sess. 64 (1992); H. Rep. No. 873, 102d Cong. 2d Sess., pt. 1, at 19 (1992); and H. Rep. No. 873, 102d Cong., 2d Sess., pt. 2, at 18 (1992).

was held at the Copyright Office on June 11, 1993. Discussion of comments follows below in section III.

The DART/Q Form as initially published incorporated practical modifications that were suggested by the parties in their comments on the written interim regulations describing what a Statement of Account should contain.

In response to comments received from interested parties, we have made some revisions in the 1993 interim regulations, and we are now issuing superseding interim regulations governing the filing of Statement of Account Forms on both a quarterly (Form DART/Q) and an annual (Form DART/A) basis. The regulations provide the filing dates, frequency of filing, and content of the quarterly and annual Statements of Account.

## II. Review of 1993 Interim Regulations

### A. Quarterly Statements of Account

Most of the comments and explanations accompanying the interim regulations published on February 22, 1993 are still pertinent, but some specific points are addressed here.

#### 1. Forms.

The 1993 interim regulations proposed four filings per fiscal or calendar year: three quarterly statements, and a fourth Statement of Account combining the final quarterly statement and the required annual statement. Each manufacturing or importing party who distributes digital audio recording products files a quarterly form that contains information concerning product categories, technologies, transfer prices, series and model numbers, and units distributed. Comments we received concerning quarterly Statements of Account are discussed below in section III(A).

#### 2. Filing Dates and Basis of Filing.

The 1993 interim regulations required Statements of Account to be submitted on either a calendar year or fiscal year basis, at the election of the filing party. Under our proposal the elected filing basis was to remain in effect for three years, with any change in the basis to be permitted only after a request to and approval by the Copyright Office. Comments on this provision are discussed below in section III(A)(2).

The 1993 interim regulations require quarterly Statements of Account to be filed at intervals of three months. During the first stage of implementation of the AHRA the Office provided a transitional schedule that did not require a separate quarterly DART statement for the last part of 1992. The first quarterly statement covered the period from October 28, 1992 (the date of enactment of the AHRA) to the end of at least one full quarter, and was due either within 45 days following the end of the first full quarter after October 28, 1992; or by May 15, 1993, whichever was later. Later quarterly statements are due within 45 days after the end of the relevant quarters.

Annual Statements of Account should reconcile quarterly figures and provide information regarding yearly activity. Annual statements are due two months after the close of the calendar or fiscal year covered by the statement. Comments regarding annual Statements of Account are discussed in section III(B).

#### 3. Late Payments, Overpayments, Underpayments, and Refunds.

The 1994 interim regulations allow for corrections of quarterly and annual Statements of Account to rectify errors in payments of royalties. An underpayment of five dollars (\$5.00) or less will require no action by the Office. The Licensing Division will notify the manufacturing or importing party of underpayments of more than five dollars so that the party can make the necessary corrections or amended filings.

If royalty payments are not made on time, copyright owners suffer from loss of the current value of funds. Therefore, interest will be imposed on underpayments and late payments.

The earlier interim regulations provide for refunds to be made by the Copyright Office in connection with overpayments accompanying annual Statements of Account. These superseding interim regulations will also allow refunds of overpayments accompanying quarterly DART statements.

#### 4. Credits for Returns or Exports

The earlier 1993 interim regulations permitted credits to be taken for returned or unsold recording devices; the credit was to 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. The Copyright Office has decided to modify this policy in this superseding interim regulation.

As revised, this new interim regulation permits manufacturers and importers to take a credit for returns of both recording devices and media on either quarterly or annual Statements of Account. Credits may be taken when products are exported or returned to the manufacturers or importers as unsold or defective. Whenever returned products for which credit has been taken are later distributed in the United States, the statutory royalty must be paid, and the distribution must be reported on the appropriate Statement of Account. The Copyright Office has also decided to allow a credit for exports. These regulations give filing parties two years to take a credit.

#### 5. Access to Statements of Account

In accordance with 17 U.S.C. 1003(c)(2), quarterly and annual Statements of Account will not be made part of the Copyright Office's public records or directly or indirectly disclosed to the general public. Specific regulations governing confidential access by interested parties, as defined in the AHRA, will be issued separately.

## III. Discussion of Comments

### A. Quarterly Statements of Account

The Office received two comments responding to the interim regulations published on February 22, 1993. One was filed by the American Institute of Certified Public Accountants (AICPA), and the other was from the DART Coalition. In addition, the oral comments made at the Office's public meeting on this subject are essentially reflected in the parties' written comments, which are summarized here.

#### 1. The American Institute of Certified Public Accountants (AICPA)

The AICPA is a national professional association representing certified public accountants (CPAs) in public practice, industry, government, and education. The group aids in developing standards for audits and other services provided by CPAs, in administering the Uniform CPA Examination, and in monitoring and enforcing compliance with the profession's technical and ethical standards. The AICPA also

monitors and analyzes federal regulations that may affect accounting and related matters.

The AICPA did not comment on the quarterly form. Their comments related to CPAs' audits of annual DART Statements of Account, and are discussed below at section III(B).

## 2. The DART Coalition

The DART Coalition consists of representatives of the Electronic Industries Association, the National Music Publishers' Association, Inc. and its subsidiary The Harry Fox Agency, Inc., the Recording Industry Association of America, the Home Recording Rights Coalition, the Alliance of Artists and Recording Companies, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the American Federation of Musicians of the United States and Canada, the American Federation of Television and Radio Artists, Copyright Management, Inc., and the Songwriters Guild of America.

The Copyright Office had proposed in the 1993 interim regulation that a filing party be locked into election of a calendar or fiscal filing basis for three years. The Coalition suggested that, where a filing party shows good cause, it be allowed to change its accounting period (calendar or fiscal) at any time. The DART Coalition noted that, if its suggestion were to be accepted, a filing party should not be allowed to change its filing status to alter the total aggregate royalty payments. They suggested that the regulations require notification of changes in filing status to include provisions to equalize total aggregate payments under the new basis with those that would have been made under the earlier basis. DART Coalition comments at 3.

The DART Coalition also suggested clarification with regard to products subject to Statements of Account and royalty payment obligations: except for "credits for returns and exported merchandise and subsequent obligations with respect to products for which credits have been claimed," the obligation should apply only to units first distributed in the United States during the appropriate filing period. DART Coalition comments at 5.

The DART Coalition suggested that in

the reporting space for tracking audio recording devices and media manufactured and distributed or imported and distributed by a party, the terms "product category" and "technology" be expressed in the plural, and "space should be provided for multiple product categories and technologies."

DART Coalition comments at 6.

In addition, the group suggested modification of the requirements governing presentation of model number and transfer price information to permit aggregation of products of the same model (or series) number with the same applicable transfer price. DART Coalition comments at 6-7.

Regarding information to be provided for stand-alone devices and devices first distributed with other devices, the Coalition indicated that the Office had not provided enough fee codes in the quarterly form to cover all the types of devices that have to be reported. DART Coalition comments at 7-9.

The Coalition also suggested that clarification be made as to when royalties are payable. It recommended that language in the Office's final regulations should indicate that royalties are due upon the filing of quarterly or annual Statements of Account, not upon distribution. DART Coalition comments at 9. In addition, the Coalition suggested that because multiple transfer prices may apply to a given product series or model, the language in the interim regulations should be modified to provide for this possibility. *Id.*

Finally, the Coalition suggested that, regarding treatment of monies that may be attributable to 1992 activities, any initial quarterly Statements of Account that include partial fiscal or calendar quarters ending in 1992 include estimates of payments attributable to 1992 and 1993 quarters. DART Coalition comments at 10.

### B. Annual Statements of Account

Comments about annual Statement of Account forms were based upon the language of the 1993 interim regulations governing the contents of annual forms, rather than a draft of the form itself.

#### 1. The American Institute of Certified Public Accountants

AICPA argued that the CPA who audits an annual statement should be required to audit a separate "schedule of royalties" (a document not anticipated or mentioned in

the 1993 interim regulation) rather than the annual statement itself. AICPA comments at 1. The comments suggested that this separate schedule should relate only to the number of devices and media distributed, their transfer prices, and the cumulative amount of royalties. AICPA said that CPAs should not be associated with the information contained in the fourth quarterly statement or the entire annual statement, but instead should comment only on the data that has been audited. AICPA wrote:

[W]e recommend that in addition to the Annual Statement of Account, management prepares a "schedule of royalties" which the CPA would audit. The appropriate information would be taken from the Annual Statement of Account and, therefore, not result in additional cost.

AICPA comments at 2. AICPA proposed that the auditing CPA should also be permitted to "express a qualified or adverse opinion or a disclaimer of an opinion, and other comments." AICPA comments at 1. This would meet generally accepted auditing standards, and would apply in situations where conditions or circumstances beyond the auditor's control cannot be audited, corrected, or honestly vouched for by the CPA.

In addition, AICPA proposed that the language in the illustrative CPA report which the Office had included in the 1993 interim regulations be revised to be "consistent with current authoritative auditing literature." *Id.* Sample language was suggested to provide information about accurate usage of terms associated with accounting procedures. Regarding correct use of terms of art, or language used by CPAs in the exercise of their duties, the AICPA suggested correction of proposed language of section (4)(ii)(A) of the 1993 interim regulation. The proposed language showing that CPAs "certify" financial statements should be changed, because CPAs actually "audit" such documents. The two terms have different meanings that give CPAs different responsibilities. AICPA comments at 3.

Finally, the AICPA requested extending the filing date for annual audited Statements of Account from two months to 90 or 120 days because CPAs are busiest during January and February. AICPA comments at 4.

## 2. The DART Coalition

The Coalition commented on the 1993 interim regulations' provisions governing the annual summary of the number of devices and media manufactured or imported and distributed, and recommended several changes. Rather than follow the Office's proposed breakdown of the summary into "product category," "technology," and "model number," the group preferred an integrated summary based on models within each category and technology. DART Coalition comments at 13.

The Coalition also commented on the provision on credits for returns or exports. It was suggested that the credit provision be

\*\*\* clarified to make clear that credits are applicable to units on which a royalty payment has been made by the manufacturing party that are (a) returned to the manufacturing party less than two years following first distribution by the manufacturing party and (b) originally 'distributed' (i.e., transferred by the manufacturing party for ultimate transfer to consumers in the United States), which are thereafter exported by the manufacturing party within two years following first distribution. A credit for exports would, therefore, arise where the manufacturing party, after an initial, internal distribution on which a royalty payment has been made, subsequently exports.

DART Coalition comments at 14-15. Further clarification was suggested to emphasize that a royalty payment is not triggered until distribution takes place, and that, if a product is never distributed, no royalty is paid and no need exists for a credit. DART Coalition comments at 15. In addition, the Coalition asserted that an individual listing of returned or exported digital audio recording products, as suggested by the Office, would not be as efficient as presenting information by model, with transfer price and applicable royalty credit "in a format comparable to that provided for the quarterly Statement of Account." DART Coalition comments at 16.

The Coalition had no comments, at the time of filing its comments on the 1993 interim regulation, regarding accounting certification.

## IV. Public Meeting

On June 11, 1993, the Copyright

Office held a public meeting intended to exchange comments and information regarding the quarterly Statement of Account as proposed in the 1993 interim regulations and as published in the initial version of the DART/Q Form. Comments were invited as well about the annual Statement of Account form, which had been discussed in the interim regulations, but had not yet been published. 58 FR 29001 (1993). The meeting was informal and no recording was made of the discussion, much of which covered points raised in the previously-submitted written comments.

One new matter was raised: the possible use of spreadsheets as part of the Statement of Account reporting form. The Office considers this a suggestion that should be explored, but believes it does not need to be incorporated in the regulations. The Licensing Division is currently discussing the use of computer-generated forms with interested parties.

## V. Policy Decisions

The Copyright Office has examined our 1993 interim regulations in light of the comments received. We have accepted most of the suggestions made by the parties, noting that they involve solutions to practical problems and that the AHRA itself is the result of a cooperative agreement among the interested parties.

The 1993 interim regulations published in 57 FR 9544 (1993), are superseded by this second set of 1994 interim regulations. Several important modifications and additions are incorporated, including treatment of the auditor's report to accompany the annual Statement of Account, and fine tuning of the specific contents of quarterly and annual statements. We have also decided to provide for credits and for refunds on a quarterly as well as an annual basis, for both devices and media, and to extend the credit to situations where the products are exported. We also eliminate the former requirement that a manufacturing or importing party filing DART statements is locked into its choice of a filing basis for three years unless permission to change is sought from and granted by the Register of Copyrights. Although parties filing DART statements must note on the forms whether they are filing on a calendar or a fiscal year basis, changes in

filing basis may be made by notifying the Register at least two months before filing on the changed basis, with a written statement of reasons as to why the change is to be made and a statement that such a change will not affect the aggregate royalties due under the earlier basis.

Based upon AICPA's recommendations concerning appropriate auditing terminology and procedures, the Copyright Office is adopting procedures for the primary auditor's report that allow the auditor to make his or her report either on or attached to the DART/A Form.

The DART Coalition's concerns regarding the manner in which products are to be aggregated on the Statements of Account by product and technology has been addressed by clarifying that the Statement of Account permits the reporting of each unique combination of product category, technology, series or model number, fee code, source code, and transfer price.

The Office also received comments during its rulemaking proceeding RM 93-2, Auditing of and Confidential Access to Statements of Account, that should be noted. The Electronic Industries Association (EIA), commented that an audit may cost a party thousands of dollars, and could "create a barrier that would keep small manufacturer or importers out of the digital audio market," a negative result not contemplated by the Act. EIA comments at 17. EIA suggested that small manufacturers or importers would benefit from an elective exemption from the Act's audit requirement. The exemption would be available for "filers that either (i) do not engage an independent CPA to conduct an annual financial audit or (ii) file an annual statement of account showing a royalty payment due of less than five thousand dollars (\$5,000)." *Id.* The Office has considered this proposal, but has concluded that it should not provide such a waiver in these regulations covering the primary audit.

In an effort to facilitate easy and accurate filing of Statements of Account, the Office has revised the DART/Q Form since its original issue. Copies of the most current DART/Q and the new DART/A Forms are available upon writing the Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557, by calling (202) 707-8150 or by facsimile

via facsimile for informational purposes, but facsimile copies may not be submitted to the Office.

## Table 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 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; §201.28 is also issued under Pub. L. 102-563, 106 Stat. 4237.

2. Section 201.28 is revised 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 filing of Statements of Account and royalty fees in the Copyright Office as required by 17 U.S.C. 1003(c) and 1004, in order to report and distribute, or manufacture and distribute, in the United States any digital audio recording device or digital audio recording medium.

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

(1) *Annual Statement of Account* is the statement required under 17 U.S.C. 1003, to be filed no later than two months after the close of the accounting period covered by the annual statement.

(2) *Device* and *medium* have the same meaning as *digital audio recording device* and *digital audio recording medium*, respectively, have in 17 U.S.C. 1001.

(3) *Digital audio recording product* means digital audio recording devices and digital audio recording media.

(4) *Generally accepted auditing standards (GAAS)*, means the auditing standards promulgated by the American Institute of Certified Public Accountants.

(5) *Manufacturing or importing party* refers to any person or entity that manufactures and distributes, and/or reports and distributes, any digital audio recording device or digital audio

recording medium in the United States, and is required under 17 U.S.C. 1003 to file with the Copyright Office quarterly and annual Statements of Account.

(6) *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 2-1/2 inch, 3 inch, or 5 inch discs.

(7) *Primary auditor* is the certified public accountant retained by the manufacturing or importing party to audit the amounts reported in the annual Statement of Account submitted to the Copyright Office. The primary auditor may be the certified public accountant engaged by the manufacturing or importing party to perform the annual audit of the party's financial statement.

(8) *Quarterly Statement of Account* is the statement accompanying royalty payments required under 17 U.S.C. 1003, to be filed for each of the first three quarters of the accounting year, and no later than 45 days after the close of the quarterly period covered by the statement.

(9) *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 cassettes (DCC), or recordable compact discs, including minidisks (MD).

(10) *Distribute, manufacture, transfer price, and serial copying* have the meanings set forth in 17 U.S.C. 1001.

(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 election of a calendar or fiscal year basis must be made when the manufacturing or importing party files its first

quarterly Statement of Account by appropriate designation on the Form DART/Q submitted. Thereafter the specific calendar or fiscal-year accounting period must be designated on each quarterly Statement of Account. The filing basis may be changed at any time upon notification in writing to the Register of Copyrights, accompanied by a statement of reasons as to why the change is to be made and a statement that such change will not affect the aggregate royalties due under the earlier basis. The notification of change in filing basis must be made at least two months before the date the next quarterly Statement of Account is due to be filed.

(2) *Quarterly filings.* Quarterly Statements of Account shall be filed on Form DART/Q and shall cover a three-month period corresponding to the calendar or fiscal year of the filing party. A quarterly statement shall be filed no later than 45 days after the close of the period it covers.

(3) *Annual filings.* Annual Statements of Account shall be filed on Form DART/A and shall cover both the fourth quarter of an accounting year and the aggregate of the entire year corresponding to the calendar or fiscal accounting year elected. An annual statement shall be filed no later than two months after the close of the period it covers. As a transitional measure, however, the first annual Statement of Account filed after October 28, 1992, is not due until March 1, 1994, or two months after the end of the calendar or fiscal year in which the manufacturing or importing party first filed a quarterly Statement of Account, whichever is later. The first annual Statement of Account shall cover the entire period from October 28, 1992, to the end of the full accounting year. The appropriate royalty payment, calculated according to the instructions contained in Form DART/A, shall accompany the annual Statement of Account covering royalties due for the filing year: that is, royalties for the fourth quarter and any additional royalties that are due because of adjustments in the aggregate amounts of devices or media distributed.

(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 and will be assessed the appropriate interest charge for the late filing.

(d) *Forms.* (1) Each quarterly or annual Statement of Account shall be submitted on the appropriate form prescribed by the Copyright Office. Computation of the royalty fee shall be in accordance with the procedures set forth in the forms and this section. Statement of Account forms are available from the Licensing Division, Library of Congress. Forms and other information may be requested from the Licensing Division by facsimile transmission (FAX), but copies of Statement of Account forms transmitted to the Office by FAX will not be accepted.

(2) Forms prescribed by the Copyright Office are designated Quarterly Statement of Account for Digital Audio Recording Products (Form DART/Q) and Annual Statement of Account for Digital Audio Recording Products (Form DART/A).

(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 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 17 U.S.C. 1004. 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 filed on Form DART/Q, the "Quarterly Statement of Account for Digital Audio Recording Products," and shall include a clear statement of the following information:

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

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

(iii) The full legal name of the manufacturing and/or importing party,

together with any "doing-business-as" names used by such person or entity for the purpose of conducting the business of manufacturing, importing, or distributing digital audio recording products;

(iv) The full mailing address of the manufacturing or importing party, including a specific number and street name, or rural route and box number, of the place of business of the 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;

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

(vi) The designation "Product Categories" together with the product categories of the digital audio recording products manufactured or imported and distributed during the quarter covered by the statement;

(vii) The designation "Technologies" together with the technologies of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(viii) The designation "Series or Model Number" followed by the model or series numbers of the digital audio recording products manufactured or imported and distributed under the AHRA during the quarter covered by the statement;

(ix) The "fee code" associated with the product;

(x) The "source code" for the product category;

(xi) The "transfer price" of the product;

(xii) The "number of units distributed" for each product;

(xiii) The "minimum fee per unit" for each product;

(xiv) The statutory royalty "rate" for digital audio recording devices or media;

(xv) The "rate fee" for each product;

(xvi) The appropriate "maximum fee per unit" for each product;

(xvii) The "maximum fee" for each product; and

(xviii) A computation of the total royalty payable for the quarter covered by

the statement. Filing parties may not round off the figures they list in Space C, the computation section of the form, except for the figure representing the total royalty fee due; in that case, numbers ending in 50 to 99 cents may be rounded up to the next dollar, and numbers ending in one to 49 cents may be rounded down to the next dollar;

(3) *Royalty payments and accounting.*

(i) The royalty specified in 17 U.S.C. 1004, shall accompany the quarterly and annual Statements of Account. No royalty is payable for 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 Statement of Account shall contain the following information for each unique combination of product category, technology, series or model number, fee code, source code, and transfer price:

(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 distributed 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 distributed 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 distributed 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 distributed for which the statutory minimum royalty is limited to one dollar (\$1.00), multiplied by such one dollar amount.

(ii) The amount of the royalty payment shall be calculated in accordance with the instructions specified in the quarterly Statement of Account form. Payment of the royalty fee must be in the form of a certified check, cashier's check, money order, or electronic payment payable to the Register of Copyrights.

(4) *Reduction of royalty fee.* (i) Section 1004(a)(2)(A) of title 17 U.S. Code,

provides an instance in which royalty payments may be reduced if the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

(ii) Notice of this provision together with directions for possible application to a product is contained in the DART/Q Form.

(5) *Contact party.* Each Statement of Account shall include the name, address, and telephone and facsimile (FAX) numbers of an individual whom the Copyright Office can write or call about the Statement of Account.

(6) *Credits for returned or exported products.* When digital audio recording products first distributed in the United States for ultimate transfer to United States consumers are returned to the manufacturer or importer as unsold or defective merchandise, or are exported, the manufacturing or importing party may take a credit to be deducted from the royalties payable for the period when the products were returned or exported. The credit may be taken only for returns or exports made within two years following the date royalties were paid for the products. This credit must be reflected in the manufacturing or importing party's quarterly or annual Statement of Account. If the manufacturer or importer later redistributes in the United States any products for which a credit has been taken, these products must be listed on the Statement of Account, and a new computation of the royalty fee must be made based on the transfer price of the products at the time of the new distribution.

(7) *Oath and signature.* Each Statement of Account shall include the handwritten signature of an authorized officer, principal, or agent of the filing party. 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) The following certification:

I, the undersigned, hereby certify that I am

an authorized officer, principal, or agent of the "manufacturing or importing party" identified in Space B.

Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

(f) *Contents of annual Statements of Account.* (1) *General contents.* Each annual Statement of Account shall be filed on form DART/A, "Annual Statement of Account for Digital Audio Recording Products." It must be filed by any importer or manufacturer that distributed in the United States, during a given calendar or fiscal year, any digital audio recording device or digital audio recording medium. The annual statement shall cover the aggregate of the distribution of devices and media for the entire year corresponding to the calendar or fiscal year elected. The annual Statement of Account shall contain the information, oath, and certification prescribed in paragraphs (e)(2)(i) through (e)(7)(iii) of this section, and shall cover the entire accounting year, including the fourth quarter distribution, and shall also provide for the reconciliation of the aggregated accounting of digital audio recording devices and media for the reported accounting year.

(2) *Reconciliation.* Any royalty payment due under sections 1003 and 1004 of title 17 that was not previously paid with the filing party's first three quarterly Statements of Account, shall be reconciled in the annual statement. Reconciliation in the annual Statement of Account provides for adjustments for reductions, refunds, underpayments, overpayments, credits, and royalty payments paid in Quarters 1, 2, and 3, and shall be computed in accordance with the instructions included in the annual Statement of Account. Errors that require reconciliation shall be corrected immediately upon discovery.

(3) *Accountant's opinion.* Each annual Statement of Account or any amended annual Statement of Account shall be audited by the primary auditor as defined in paragraph (b)(7) of this section. An amendment may be submitted to the Office either as a result of responses to questions raised by a Licensing Division examiner or on the initiative of the manufacturing or importing party to correct an error in the original Statement of Account.

(i) The audit shall be performed in accordance with generally accepted

auditing standards (GAAS). The audit may be performed in conjunction with an annual audit of the manufacturing or importing party's financial statements.

(ii) The CPA shall issue a report, the "primary auditor's report," reflecting his or her opinion as to whether the annual statement presents fairly, in all material respects, the number of digital audio recording devices and media that were imported and distributed, or manufactured and distributed, by the manufacturing or importing party during the relevant year, and the amount of royalty payments applicable to them under 17 U.S.C. chapter 10, in accordance with that law and these regulations.

(iii) The primary auditor's report shall be filed with the Copyright Office together with the annual Statement of Account, within two months after the end of the annual period for which the annual Statement of Account is prepared. The report may be qualified to the extent necessary and appropriate.

(iv) The Copyright Office does not provide a specific form, or require a specific format, for the CPA's review; however, in addition to the above, certain items must be named as audited items. These include the variables necessary to complete Space C of the Statement of Account form. The CPA may place his or her opinion, which will serve as the "primary auditor's report," in the space provided on Form DART/A, or may attach a separate sheet or sheets containing the opinion.

(v) The auditor's report shall be signed by an individual, or in the name of a partnership or a corporation, and shall include city and state of execution, certificate number, jurisdiction of certificate, and date of opinion. The certificate number and jurisdiction are not required if the report is signed in the name of a partnership or a corporation.

(g) *Documentation.* All filing parties shall keep and retain in their possession, for at least three years from the date of filing, all records and documents necessary and appropriate to support fully the information set forth in quarterly and annual statements that they file.

(h) *Corrections, supplemental payments, and refunds.* (1) *General.* Upon compliance with the procedures and within the time limits set forth in this paragraph (h), corrections to quarterly and annual Statements of Account will be placed on record, and supplemental royalty fee payments will be

received for deposit, or refunds without interest will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by the quarterly or 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 (h)(2) of this section, 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, supplemental royalty fee payments will not be received for deposit, and refunds will not 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, cases where digital audio recording media were exported) took place later.

(3) Requests that corrections to annual or quarterly Statements of Account be accepted, that fee payments be accepted, or that refunds be issued 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 and must clearly identify the manufacturing or importing party making the request, the accounting period in question, and the purpose of the request. A request for a refund must be received in the Copyright Office before the expiration of two months 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 two-month 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 two-month period.

(ii) The request must clearly identify the incorrect or incomplete information formerly filed and must provide the correct or additional information.

(iii) In the case where a royalty fee was miscalculated and the amount deposited with the Copyright Office was 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 28 U.S.C. 1746, made and signed in accordance with paragraph (e)(7) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv) Following final processing, all requests 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 or importing 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.

(v)(A) The request 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 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) Requests that a supplemental royalty fee payment be deposited 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, money order, or electronic payment payable to the Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(vi) All requests submitted under paragraph (h) of this section must be signed by the manufacturing or importing party named in the Statement of Account, or the duly authorized agent of that party in accordance with paragraph (e)(7) of this section.

(vii) A request for a refund is not necessary where the Licensing Division, during its examination of a 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 or importing party named in the Statement of Account. The Copyright Office will not pay interest on any royalty refunds.

(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.

(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 not be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty was deposited, that the statutory time limits for filing had been met, or that any other requirements of 17 U.S.C. 1001 *et seq.* were fulfilled.

(j) *Interest on late payments or underpayments.* (1) Royalty payments submitted as a result of late payments or underpayments 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 occurring within that accounting period. The accrual period for interest shall end on the date appearing on the certified check, cashier's check, money order, or electronic payment submitted by the manufacturing or importing party, if the payment is received by the Copyright Office withi



five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, 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, 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 five dollars (\$5.00) or less.

(k) *Confidentiality of Statements of Account.* Public access to the Copyright Office files of Statements of Account for digital audio recording products shall not be provided. Access will only be granted to interested copyright parties in accordance with regulations prescribed by the Register of Copyrights pursuant to 17 U.S.C. 1003(c).

Dated: January 26, 1994.

Barbara Ringer,  
*Acting Register of Copyrights.*

James H. Billington,  
*Librarian of Congress.*

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