



**United States Copyright Office**

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August 21, 2009

Dear Stakeholders:

As indicated earlier this summer, the Copyright Office has determined that the Copyright Royalty Judges' recent determination setting rates and terms for the Section 115 Compulsory License requires the Office to revisit the current regulations regarding monthly and annual Statements of Account ("SOA"). 37 C.F.R. 201.19. The Office observes that the Copyright Royalty Judges' recent determination was in large part the result of the cooperative efforts of the participants in the proceeding. However, the calculation of the new rates, in many cases, is not straightforward, for instance where the rates must take into consideration the royalties paid for the public performance of the musical works. For this reason the Copyright Office has met with stakeholders before initiating a rulemaking to discuss how to amend its regulations to accommodate the changes in the rate structure as negotiated by the participants, and has encouraged the stakeholders to consider filing a joint submission of a petition for rulemaking.

The Office is interested in hearing from parties regarding whether and how updated regulations should address:

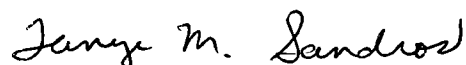
1. Detailed calculations of "service revenue";
2. Detailed calculations regarding alternative minimum payments;
3. Accounting for performance rights royalties when they are not necessarily known at a given point in time;
4. Accounting methodology and timetable for reporting over or under payments, e.g., those due to reasonable restatements of revenue and restatements of expenses accrued across different accounting periods or adjustments to the royalty rate for the public performance component;
5. Indications and/or identification of third party licensees;
6. Reporting of "promotional" DPDs;
7. Retention of records necessary to support information set forth in SOAs;
8. Methodology for certification of SOAs;
9. Reporting requirements when licensee cannot track play information due to bona fide limitations of available technology as referenced in 37 C.F.R. 385.12(b);
10. Modification of 37 C.F.R. 201.19(e)(7) to allow delivery of electronic SOAs including the use of an electronic signature and the concurrent submission of payment via an alternate method, e.g., an EFT;
11. Calculation and reporting of late fees; and
12. A harmless error provision.

While the Office notes that the statute is quite specific with regard to SOA and payment requirements, it also recognizes that several parties have suggested that SOA regulations might allow for accrual of a threshold amount before requiring payment as well as rounding of numbers in the accounting process. Preliminary discussions between the Office and individual participants have revealed a generally held view that updated SOA rules should accommodate several of the issues raised by the new rate structure through reliance upon Generally Accepted Accounting Principles (“GAAP”). The Office is interested in hearing more specifically how reference to GAAP may address the above noted issues and it is also interested in the stakeholders’ views on any other relevant issues not yet identified.

Finally, the Office is interested in considering a proposal that addresses the need to update several of the terms currently set forth in 201.19. For example, the definition of “incomplete transmissions” and “retransmissions” may cause confusion in light of the coverage for certain ringtones and streams under the new rates and terms.

As indicated, the Office supports discussions among the stakeholders on these issues and would welcome for its consideration a joint proposal for amendments to the regulations for monthly and annual Statements of Account that accommodate the new rate structure. However, if at some point, it becomes clear that a joint proposal is not a realistic possibility, the Office will publish either a Notice of Inquiry or a Notice of Proposed Rulemaking in the Federal Register seeking comment on the matter.

Sincerely,



Tanya M. Sandros  
Deputy General Counsel  
United States Copyright Office

CC: Steve Marks, RIAA; Jonathan Potter, DiMA; Ron Gertz, Royalty Logic; Jacqueline Charlesworth & Kathryn Wagner, NMPA; Bart Herbison, SGA; Steve Bogard, NSAI