

to audit a particular service with the Copyright Office, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the entity designated by the copyright arbitration royalty panel in 37 CFR 260.3 to receive and to distribute the royalty fees.

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty

payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), or their designated agents.

EFFECTIVE DATE NOTE: At 68 FR 36470, June 18, 2003, § 260.6 was revised, effective July 18, 2003. For the convenience of the user, the revised text is set forth as follows:

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the method of verification of the payment of royalty fees by the designated agent to interested parties; Provided, however, that the designated agent and any interested person may agree as to an alternative method of verification.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the designated agent during any given calendar year and no calendar year shall be subject to audit more than once.

§260.7

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the designated agent. Such notice of intent shall also be served at the same time on the designated agent to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the FEDERAL REGISTER a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the designated agent shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those individuals or entities who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

§260.7 Unknown copyright owners.

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three-year period. After the expiration of this period, the collecting agent may use the unclaimed funds to offset the cost of the administration of the collection and distribution of the royalty fees.

[63 FR 25413, May 8, 1998, as amended at 64 FR 36576, July 7, 1999]

EFFECTIVE DATE NOTE: At 68 FR 36470, June 18, 2003, §260.7 was amended by removing the word "collecting" after the phrase "If the designated"; by removing the word "collecting" each place it appears and adding the word "designated" in its place; and in the last sentence, by removing the word "fees" and adding the word "payments" in its place, effective July 18, 2003.

37 CFR Ch. II (7-1-03 Edition)

PART 261—RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

- 261.1 General.
- 261.2 Definitions.
- 261.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.
- 261.4 Terms for making payment of royalty fees and statements of account.
- 261.5 Confidential information.
- 261.6 Verification of statements of account.
- 261.7 Verification of royalty payments.
- 261.8 Unclaimed funds.

AUTHORITY: 17 U.S.C. 112(e), 114, 801(b)(1).

SOURCE: 67 FR 45272, July 8, 2002, unless otherwise noted.

§261.1 General.

(a) This part 261 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e).

(b) Licensees relying upon the statutory license set forth in 17 U.S.C. 114 shall comply with the requirements of that section and the rates and terms of this part.

(c) Licensees relying upon the statutory license set forth in 17 U.S.C. 112 shall comply with the requirements of that section and the rates and terms of this part.

(d) Notwithstanding the schedule of rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services within the scope of 17 U.S.C. 112 and 114 concerning eligible nonsubscription transmissions shall apply in lieu of the rates and terms of this part.

§261.2 Definitions.

For purposes of this part, the following definitions shall apply:

Aggregate Tuning Hours mean the total hours of programming that the Licensee has transmitted over the Internet during the relevant period to