protecting the interests of credit union members in this context.

(d) *Member Voting: Right to Request a Recount and Use of Interim Tallies.*

For the transactions that are the subject of this ANPR, NCUA is considering permitting any member of a credit union to request a formal recount of the vote in any situation in which the margin of decision is less than a certain percentage of the total votes cast. NCUA has not determined the appropriate margin for triggering recount rights and believes examining state law on political vote recounts in this regard could be appropriate and useful. NCUA is also considering a recount provision if sufficient evidence exists that the original vote tabulation is unreliable.

NCUA has reviewed the voting procedures of a number of close votes in recent years. In those cases, NCUA found irregularities and improprieties that called into question the reliability of the vote. Examples of problems found include the credit union or its agent: Failing to compile a proper membership list thereby excluding some members from the vote; improperly excluding members from voting for causing a loss to the credit union; allowing individuals not fully qualified as members to vote; improperly handling mail ballots returned as undeliverable; employing poor internal controls in securing, counting, and recording votes; using inconsistent procedures for determining if a vote cast was invalid; and being generally unable to reconcile the tally.

An unreliable voting process, whether intentionally manipulated or the result of incompetence, deprives members of their right to choose the fate of their credit union. NCUA requests comment on providing members the right to request a recount, under what circumstances and criteria a recount should be undertaken, and procedures for exercising such a right.

The use by management of an interim vote tally presently is primarily an issue in the FICU to MSB conversion context but could be an issue anytime management has an interest in influencing the outcome of a membership vote. NCUA has observed in the voting procedures in some FICU to MSB conversions that credit union management seek periodic running tallies from the election teller as to how many members have voted yes and no and which members have not voted. Credit union management has justified this practice by stating they only use the information for the purpose of encouraging members to vote. In investigations of recent conversions, NCUA has discovered that, in practice, some credit unions use this information only for encouraging votes in favor of the conversion. This violates both Part 708a and typical credit union policies aimed at neutrality in this regard. For example, some credit unions have pressured, required, or paid employees to encourage members to vote in favor of conversion even where the employees did not wish to do so or did not believe conversion was in the members' best interests. NCUA has learned that some credit unions have targeted likely ''yes'' voters in an attempt to sway the vote in favor of conversion. Other tactics include determining how a member voted in violation of the voting secrecy requirement, using periodic voting tallies to management's advantage and to the disadvantage of those members opposed to the conversion by not sharing that information with members, and improperly handling ballots for members instead of having members mail them directly to the independent election teller.

NCUA is considering: (1) Prohibiting credit union management from obtaining interim voting tallies from the election teller; (2) prohibiting credit union management from obtaining lists of members who have not voted from the election teller; (3) prohibiting credit union employees from soliciting members to vote; and (4) prohibiting credit union employees from completing member ballots or otherwise handling ballots. NCUA would appreciate comments on these means for ensuring the integrity of the voting process.

Request for Comments

The NCUA Board invites comment on any of the issues discussed above including: (1) If NCUA's regulations should be amended to address the issues discussed in this ANPR; (2) if NCUA should promulgate new regulations for credit union merger or conversion into a financial institution other than an MSB and, if so, what those regulations should cover; and (3) any other relevant issues NCUA has not considered.

By the National Credit Union Administration Board on January 24, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–1572 Filed 1–29–08; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 384

[Docket No. 2007–1 CRB DTRA–BE]

Determination of Rates and Terms for Business Establishment Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period 2009–2013.

DATES: Comments and objections, if any, are due no later than February 29, 2008.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress enacted the Digital Performance in Sound Recordings Act, Public Law No. 104–39, which created an exclusive right for copyright owners

of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of 1998 (''DMCA''), Pub. L. No. 105–304, in order to allow for the public performance of a sound recording when made in accordance with the terms and rates of the statutory license, 17 U.S.C. 114(d), by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. In addition to expanding the section 114 license, the DMCA also created a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for a later transmission. *Id.* The license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord permitted under the exemption set forth in section 112(a). 17 U.S.C. 112(e).

The rates and terms for the making of ephemeral recordings of sound recordings by a business establishment service have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Parts 261 and 262. However, the Copyright Royalty and Distribution Reform Act of 2004 (''CRDRA''), Public Law No. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (''Judges''). 17 U.S.C. 801(b)(1). The current rates for this license set forth in 37 CFR Part 262 will remain in effect until December 31, 2008. *See* Section 6(b)(3) of the CRDRA (rates and terms for section 112(e) in effect on December 31, 2004, ''shall remain in effect until the later of the first applicable effective date for successor terms and rates specified in [17 U.S.C.] section 804(b)(2)''); 17 U.S.C. 804(b)(2)(successor rates to become effective on January 1, 2009).

On January 5, 2007, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(II), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of the proceeding to determine rates and terms of royalty payments for the making of ephemeral recordings by business establishment services under section 112(e) and requesting interested parties to submit their petitions to participate. 72 FR 584 (January 5, 2007). Petitions to participate in this proceeding were received from Music Choice, Royalty Logic, Inc. (''RLI''), Muzak, LLC, SoundExchange, Inc., Sirius Satellite Radio, Inc. (''Sirius''), and XM Satellite Radio (''XM''). The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than October 31, 2007.

On October 31, 2007, the Judges received a notice of settlement entered into by all parties to the proceeding, with the exception of Muzak, which had withdrawn from the proceeding on October 5, 2007, and RLI. Accompanying the notice of settlement was a motion by SoundExchange requesting that the Judges adopt the proposed rates and terms. SoundExchange also filed its written direct statement, given that RLI had not agreed to the proposed settlement. RLI did not file a written direct statement or an opposition to SoundExchange's motion.

Prior to a ruling on the motion to publish the proposed rates and terms for notice and comment, SoundExchange filed a motion to dismiss RLI from this proceeding for failure to file a written direct statement and renewed its request that the Judges issue a notice of proposed rulemaking seeking comment on the proposed rates and terms. *See* Motion filed November 28, 2007. The Judges received no opposition to this motion from RLI. Consequently, on December 6, 2007, the Judges granted SoundExchange's motion and dismissed RLI from this proceeding. *See*, Order Granting SoundExchange's Motion to Dismiss Royalty Logic, Inc., in Docket No. 2007–1 CRB DTRA–BE (December 6, 2007).

Since all remaining parties to this proceeding have agreed to the settlement, the Judges are publishing the proposed rates and terms for notice and comment pursuant to their authority under 17 U.S.C. 801(b)(7)(A).

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of sound recordings and business establishment services making an ephemeral recording of a sound recording for the period 2009–2013.

As discussed above, the public may comment and object to any or all of the proposed regulations contained in this notice of proposed rulemaking. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to set rates and terms for the making of ephemeral recordings by business establishment services.

List of Subjects in 37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to add part 384 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

Sec.

384.1 General.
384.2 Definitions.
384.3 Royalty fees for Ephemeral Recordings.
384.4 Terms for making payment of royalty fees and statements of account.
384.5 Confidential information.
384.6 Verification of royalty payments.
384.7 Verification of royalty distributions.
384.8 Unclaimed funds.

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

§ 384.1 General.

(a) *Scope.* This part 384 establishes rates and terms of royalty payments for

the making of Ephemeral Recordings by a Business Establishment Service, as defined in § 384.2(a), in accordance with the provisions of 17 U.S.C. 112(e), during the period 2009–2013 (the ''License Period'').

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 shall comply with the requirements of that section, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to the making of Ephemeral Recordings within the scope of such agreements.

§ 384.2 Definitions.

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

Business Establishment Service means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period, the Collective is SoundExchange, Inc.

Copyright Owner is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory license under 17 U.S.C. 112(e).

Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), and subject to the limitations specified in 17 U.S.C. 112(e).

Licensee is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings.

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a certified public accountant.

§ 384.3 Royalty fees for Ephemeral Recordings.

(a) *Basic royalty rate.* For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee shall pay 10% of such Licensee's ''Gross Proceeds'' derived from the use in such service of musical programs that are attributable to copyrighted recordings. ''Gross Proceeds'' as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Minimum fee.* Each Licensee shall pay a minimum fee of $10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year. These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(c) *Other royalty rates and terms.* This part 384 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of ephemeral recordings beyond those set forth in paragraph (a) of this section. For ephemeral recordings other than those governed by paragraph (a) of this section, persons making such ephemeral recordings must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) or as prescribed by other law, regulation or agreement.

§ 384.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to Collective.* A Licensee shall make the royalty payments due under § 384.3 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 384.3 and to distribute such royalty payments to each Copyright Owner, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 384.3(a) by the 45th day after the end of each month for that month, except that if the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payments due under § 384.3(a) for the period from the beginning of the License Period through the last day of the month in which the Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 384.3(b) by January 31 of the applicable calendar year, except that:

(1) If the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payment due under § 384.3(b) for 2009 shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Copyright Royalty Judges and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made Ephemeral Recordings pursuant to the license under 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Collective after the due date. Late fees shall accrue from the due date until payment is received by the Collective.

(f) *Statements of account.* For any part of the period beginning on the date the Copyright Royalty Judges issue their final determination adopting these rates and terms and ending on December 31, 2013, during which a Licensee operates a Business Establishment Service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Collective a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Collective. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall contain only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.* The Collective shall distribute royalty payments directly to Copyright Owners; Provided that the Collective shall only be responsible for making distributions to those Copyright Owners who provide the Collective with such information as is necessary to identify and pay the correct recipient of such payments. The Collective shall distribute royalty payments on a basis that values all Ephemeral Recordings by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing reports of use of sound recordings by Licensees; Provided, however, that Copyright Owners that authorize the Collective may agree with the Collective to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Copyright Owners entitled to receive payments may agree with the Collective upon payment protocols to be used by the Collective that provide for alternative arrangements for the payment of royalties.

(h) *Permitted deductions.* The Collective may deduct from the payments made by Licensees under § 384.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) may agree to permit the Collective to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Collective relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

§ 384.5 Confidential Information.

(a) *Definition.* For purposes of this part, ''Confidential Information'' shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The Collective shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective or any other person or entity authorized to have access to Confidential Information pursuant to paragraph (d) of this section use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) Board members of the Collective, and members of Collective committees whose primary functions are directly related to royalty collection and distribution, subject to an appropriate confidentiality agreement and for the sole purpose of performing their duties as board or committee members of the Collective, as applicable, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(2) is confidential information contained in monthly statements of accounts provided pursuant to § 384.4(f) that accompany royalty payments;

(3) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to the verification of a Licensee's royalty payments pursuant to § 384.6 or on behalf of a Copyright Owner with respect to the verification of royalty distributions pursuant to § 384.7;

(4) Copyright owners whose works have been used under the statutory license set forth in 17 U.S.C. 112(e) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to paragraph (d)(4) of this section are monthly statements of account provided pursuant to § 384.4(f) that accompany royalty payments;

(5) In connection with future proceedings under 17 U.S.C. 112(e) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts; and

(6) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 384.6 or § 384.7, and under an appropriate confidentiality agreement or protective

order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Collective and any person or entity identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Collective, person, or entity.

§ 384.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Collective shall retain the report of the verification for a period of not less than 3 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 and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 384.7 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners.

(d) *Acquisition and retention of records.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner requesting the verification procedure shall retain the report of the verification for a period of not less than 3 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 and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 384.8 Unclaimed funds.

If a Collective is unable to identify or locate a Copyright Owner who is entitled to receive a royalty payment under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: January 24, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–1680 Filed 1–29–08; 8:45 am]

BILLING CODE 1410–72–P