

**§ 384.5**

**37 CFR Ch. III (7-1-08 Edition)**

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