



## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 381

[Docket No. 2011-2 CRB NCEB II]

#### Determination of Reasonable Rates and Terms for Noncommercial Broadcasting

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule.

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**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2013, and ending on December 31, 2017.

**DATES:** Comments and objections, if any, are due no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** Comments and objections may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies and an electronic copy on a CD either by mail or by 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, between 8:30 a.m. and 5 p.m. 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 2<sup>nd</sup> and D Street, NE, Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM -403, 101 Independence Avenue, SE., Washington, DC 20559-6000.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist, by telephone: (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (“Judges”) to conduct proceedings every five years to determine the rates and terms for the section 118 license.<sup>1</sup> 17 U.S.C. 801(b)(1), 804(b)(6). In accordance with section 804(b)(6), the Judges commenced the proceeding to set rates and terms for the period 2008-2012 on January 9, 2006, 71 FR 1453, and published final regulations setting those rates and terms on November 30, 2007. 72 FR 67646. Therefore, the next proceeding to determine the rates and terms for the section 118 license was to be commenced in January 2011 for the period 2013-2017. 17 U.S.C. 804(b)(6).

Accordingly, the Judges published in the **Federal Register** a notice commencing the proceeding to determine the rates and terms for the 2013-2017 period and requesting interested parties to submit their petitions to participate. 76 FR 591 (January 5, 2011).

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<sup>1</sup> Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004, which established the Copyright Royalty Judges, rates and terms for the section 118 statutory license were set under the Copyright Arbitration Royalty Panel system, which was administered by the Librarian of Congress.

Petitions to Participate were received from: The American Society of Authors, Composers and Publishers (“ASCAP”); SESAC, Inc.; Broadcast Music, Inc. (“BMI”); Educational Media Foundation (“EMF”); Music Reports, Inc.; National Public Radio, the Public Broadcasting Service, and noncommercial radio and television stations eligible to receive funding from the Corporation for Public Broadcasting jointly (“NPR/PBS/CPB”); National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”); the Church Music Publishers’ Association; the National Music Publishers’ Association, Inc. and the Harry Fox Agency, jointly (“NMPA/HFA”); the Catholic Radio Association (“CRA”); and the American Council on Education (“ACE”). 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, 2011. In response to the October 31 deadline, the Judges received written direct statements from CRA, BMI, ASCAP, and Music Reports, Inc.<sup>2</sup> as well as several notifications of settlement and proposed rates and terms for the Copyright Royalty Judges to adopt.

There are two ways that copyright owners and public broadcasting entities<sup>3</sup> may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners’ works covered by the license. Section 118(b)(2) provides that

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<sup>2</sup> Pursuant to 17 U.S.C. 803(b)(6)(C)(x), the Judges set the 60-day discovery period to run from November 30, 2011, through January 30, 2012. During the discovery period, Music Reports, Inc., and CRA each withdrew from the proceeding on December 13, 2011, and January 27, 2012, respectively. CRA also requested that the Judges vacate their Order dated January 20, 2012, compelling CRA to produce certain discovery; the Judges deny this request as moot, given CRA’s withdrawal from the proceeding.

<sup>3</sup> A “public broadcasting entity” is defined as a “noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)” of section 118. 17 U.S.C. 118(f).

such license agreements “shall be given effect in lieu of any determination by the \* \* \* Copyright Royalty Judges,” provided that copies of the agreement are submitted to the Judges “within 30 days of execution.” 17 U.S.C. 118(b)(2). The Judges received several agreements in this category for which no further action is required.

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities and submit them to the Judges for approval. Section 801(b)(7)(A) provides that in such event:

(i) the Copyright Royalty Judges shall provide 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 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 and rates.

17 U.S.C. 801(b)(7)(A). The Judges received seven proposals within this category from the following participants: (1) SESAC and ACE; (2) BMI and ACE; (3) ASCAP and ACE; (4) NMPA/HFA and NRBNMLC; (5) SESAC and NRBNMLC, (6) ASCAP and NRBNMLC; and (7) BMI and NRBNMLC.<sup>4</sup>

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<sup>4</sup> On October 31, 2011, EMF notified the Judges that as a member of NRBNMLC it was a party to each of the joint proposals involving NRBNMLC.

## **ACE Joint Proposals**

The joint proposals entered into by ACE and each of SESAC, BMI, and ASCAP propose to modify the royalty rates set forth in § 381.5. The rates proposed in the ASCAP/ACE and BMI/ACE submissions reflect a change in both the fees and the fee structure, going from a flat rate to tiered rates primarily based on the number of full-time students enrolled in the educational entity operating the station, with an exception that looks to the college radio station's authorized effective radiation power ("ERP") as set forth in its current FCC license. ASCAP/ACE Joint Proposal at 4; BMI/ACE Joint Proposal at 4. Moreover, the proposed rates for ASCAP and BMI eliminate the need for the historic annual Consumer Price Index adjustments, as the proposed rates increase at the rate of two percent per year. *Id.* at 5.

The SESAC/ACE submission retains a flat rate which is then adjusted, starting in 2014, by the change in the Consumer Price Index or two percent, whichever is greater. SESAC/ACE Joint Proposal at 2.<sup>5</sup>

Each joint proposal proposes to require that each annual payment of the royalty rate be accompanied by a declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the ERP as specified in the entity's current FCC license. *See* proposed § 381.5(d).

## **NRBNMLC Joint Proposals**

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<sup>5</sup> The proposed elimination of the CPI adjustments for ASCAP and BMI necessitated a change to § 381.10. However, no proposed language was provided with the initial proposals. Consequently, the Judges issued an order requesting proposed language to § 381.10, and the parties provided the same. *See Order Regarding Submission of Settlement Proposals*, Docket No. 2011-3 CRB NCEB II (February 2, 2012). *See also* Joint Submission of American Council on Education, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. (filed March 16, 2012).

The joint proposals entered into by NRBNMLC and each of NMPA/HFA, ASCAP, BMI, and SESAC propose carrying forward unchanged the current provisions set forth in §§ 381.1 (except to replace “2008” with “2013” and “2012” with “2017”), 381.2, 381.9, and 381.11.

The joint proposal between NMPA/HFA and NRBNMLC stated that the rates in § 381.7(b)(4) should remain the same as those currently set for 2008-2012, “subject to the additional provisions” of §§ 381.7(b)(3) and (5), since they “are reasonable” and “no circumstances exist that would warrant modification of these fees.” NMPA/HFA and NRBNMLC Joint Proposal at 2. The proposal also stated that separate negotiations were ongoing between HFA and NMPA and NPR and PBS with respect to provisions in § 381.7 other than § 381.7(b)(4). *Id.* at 2-3. When such proposal did not appear to be forthcoming, the Judges issued an order requesting in part that such proposal, if finalized, be submitted by March 16, 2012, in order to allow for publication of all proposed rates and terms in a single document. *See Order Regarding Submission of Settlement Proposals*, Docket No. 2011-2 CRB NCEB II (February 2, 2012); *see also* n.5. However, after receiving no responsive filings, the Judges issued a subsequent order requiring HFA, NMPA, NPR, and PBS to show cause why the provisions to be covered by their separate proposal (§§381.7(b)(1)(i)-(iii), 381.7(b)(2)(i)-(iv), 381.7(c), 381.7(d), and 381.7(e)) should not be removed from Part 381. *See Order to Show Cause*, Docket No. 2011-2 CRB NCEB II (March 28, 2012). In response, HFA, NMPA, NPR and PBS submitted their joint proposal covering the provisions specified in the March 28 order. Specifically, they proposed that the rates set forth in §§ 381.7(b)(1) and (2) “be changed to reflect a rate increase consistent with the prior percentage increase from the 2003-2007 license

period to the 2008-2012 license period” as such increase “is fair and reasonable.” Response to Order to Show Cause, and Joint Proposal of the Harry Fox Agency, Inc., National Music Publishers’ Association, Inc., National Public Radio, Inc. and Public Broadcasting Service, at 3 (April 4, 2012). These parties proposed no changes to §§ 381.7(c)-(e) and requested that these provisions be carried forward as is because they “are fair and reasonable in that they facilitate efficient, consistent and accurate payments of royalties for uses governed by [§] 381.7.” *Id.* at 4.

Each of the joint proposals between NRBNMLC and ASCAP, BMI, and SESAC propose modifications to § 381.6. Under the proposals, alternatives have been provided to a Religious/Community Noncommercial Radio Station in determining its Population Count which is the basis of the rates paid. In addition, the proposals include a new reduced rate for a Religious/Community Noncommercial Radio Station using a talk format necessitating a number of newly defined terms. Finally, the proposals address a Religious/Community Noncommercial Radio Station’s broadcast of in-band, on-channel, digital radio (“HD Radio”) signals.

### **Other Provisions**

Finally, the Judges have removed and reserved two sections for which no proposals were submitted. Specifically, § 381.4, which governed performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities of 17 U.S.C. 118(c), and § 381.8, which governed the terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works in PBS-distributed programs as well as in other than PBS-distributed programs, have been removed and their section numbers reserved.

As noted above, the public may comment and object to any or all of the proposed regulations contained in this notice. Such comments and objections must be submitted no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**List of Subjects in 37 CFR Part 381**

Copyright, Music, Radio, Television, Rates.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend Part 381 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

**PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING**

1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

**§ 381.1 [Amended]**

2. Section 381.1 is amended by removing “2008” and adding “2013” in its place and by removing “2012” and adding “2017” in its place.

**§ 381.4 [Removed and Reserved]**

3. Remove and reserve § 381.4.

4. Section 381.5 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 381.5 Performance of musical compositions by public broadcasting entities**

**licensed to colleges and universities.**

\* \* \* \* \*

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i)

	<b>Number of Full-Time Students</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	< 1,000	\$319	\$325	\$332	\$339	\$345
Level 2	1,000 - 4,999	\$369	\$376	\$384	\$392	\$399
Level 3	5,000 - 9,999	\$505	\$515	\$525	\$535	\$546
Level 4	10,000 - 19,999	\$655	\$668	\$681	\$695	\$708
Level 5	20,000 +	\$822	\$838	\$855	\$872	\$890

(ii) Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i)

	<b>Number of Full-Time Students</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	< 1,000	\$319	\$325	\$332	\$339	\$345
Level 2	1,000 - 4,999	\$369	\$376	\$384	\$392	\$399
Level 3	5,000 - 9,999	\$505	\$515	\$525	\$535	\$546
Level 4	10,000 - 19,999	\$655	\$668	\$681	\$695	\$708
Level 5	20,000 +	\$822	\$838	\$855	\$872	\$890

(ii) Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) 2013: \$140.00 per station;

(ii) 2014: \$140 per station, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(iii) 2015: The 2014 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(iv) 2016: The 2015 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(v) 2017: The 2016 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(vi) Such cost of living adjustment to be made in accordance with the greater of

(A) The change, if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Department of Labor, Bureau of Labor Statistics during the twelve (12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year, or

(B) Two percent (2%).

(4) For the performance of any other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment to ASCAP, BMI and SESAC shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC.

\* \* \* \* \*

5. Section 381.6 is amended as follows:

- a. By redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;
- b. By adding a new paragraph (b);
- c. By revising newly redesignated paragraph (d);
- d. By revising newly redesignated paragraph (e); and
- e. By removing current paragraph (f).

The additions and revisions to § 381.6 read as follows:

**§ 381.6 Performance of musical compositions by other public broadcasting entities.**

\* \* \* \* \*

(b) *Definitions.* As used in paragraphs (d) and (e) of this section, the following terms and their variant forms mean the following:

(1) *Feature Music* shall mean any performance of a musical work, whether live or recorded, that is the principal focus of audience attention. Feature Music does not include bridge, background, or underscore music, themes or signatures, interstitial music

between programs such as in public service announcements or program sponsorship identifications, brief musical transitions in and out of program segments (not to exceed 60 seconds in duration), incidental performances of music during broadcasts of public, religious, or sports events, or brief performances during news, talk, religious, and sports programming of no more than 30 seconds in duration.

(2) *Population Count*. The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator or Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(3) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(4) *Talk Format Station* shall mean a noncommercial radio station:

(i) Whose program content primarily consists of talk shows, news programs, sports, community affairs or religious sermons (or other non-music-oriented programming);

(ii) That performs Feature Music in less than 20% of its programming annually;  
and

(iii) That performs music-oriented programming for no more than four (4) programming hours during the hours from 6 a.m. to 10 p.m. each Weekday, with no two (2) hours of such programming occurring consecutively, with the exception of up to five (5) Weekdays during the year.

(5) *Weekday* shall mean the 24-hour period starting at 12:00 a.m. through 11:59 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays occurring between January 1 of a given year up to and including Thanksgiving day of that year.

(6) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

\* \* \* \* \*

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	<b>Population Count</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	0 – 249,999	\$631	\$644	\$657	\$670	\$683
Level 2	250,000 – 499,999	\$1,126	\$1,149	\$1,171	\$1,195	\$1,219
Level 3	500,000 – 999,999	\$1,688	\$1,722	\$1,756	\$1,791	\$1,827
Level 4	1,000,000 – 1,499,999	\$2,251	\$2,296	\$2,342	\$2,389	\$2,437
Level 5	1,500,000 – 1,999,999	\$2,814	\$2,870	\$2,928	\$2,986	\$3,046
Level 6	2,000,000 – 2,499,999	\$3,377	\$3,445	\$3,513	\$3,584	\$3,655
Level 7	2,500,000 – 2,999,999	\$3,939	\$4,018	\$4,098	\$4,180	\$4,264

Level 8	3,000,000 and above	\$5,628	\$5,741	\$5,855	\$5,972	\$6,092
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(ii) Talk Format Station Fees (Stations with < 20% Feature Music programming):

	<b>Population Count</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	0 – 249,999	\$631	\$644	\$657	\$670	\$683
Level 2	250,000 – 499,999	\$631	\$644	\$657	\$670	\$683
Level 3	500,000 – 999,999	\$631	\$644	\$657	\$670	\$683
Level 4	1,000,000 – 1,499,999	\$788	\$804	\$820	\$836	\$853
Level 5	1,500,000 – 1,999,999	\$985	\$1,005	\$1,025	\$1,045	\$1,066
Level 6	2,000,000 – 2,499,999	\$1,182	\$1,206	\$1,230	\$1,254	\$1,279
Level 7	2,500,000 – 2,999,999	\$1,379	\$1,406	\$1,434	\$1,463	\$1,492
Level 8	3,000,000 and above	\$1,970	\$2,009	\$2,049	\$2,090	\$2,132

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	<b>Population Count</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	0 – 249,999	\$631	\$644	\$657	\$670	\$683
Level 2	250,000 – 499,999	\$1,126	\$1,149	\$1,171	\$1,195	\$1,219
Level 3	500,000 – 999,999	\$1,688	\$1,722	\$1,756	\$1,791	\$1,827
Level 4	1,000,000 – 1,499,999	\$2,251	\$2,296	\$2,342	\$2,389	\$2,437
Level 5	1,500,000 – 1,999,999	\$2,814	\$2,870	\$2,928	\$2,986	\$3,046
Level 6	2,000,000 – 2,499,999	\$3,377	\$3,445	\$3,513	\$3,584	\$3,655
Level 7	2,500,000 – 2,999,999	\$3,939	\$4,018	\$4,098	\$4,180	\$4,264
Level 8	3,000,000 and above	\$5,628	\$5,741	\$5,855	\$5,972	\$6,092

(ii) Talk Format Station Fees (Stations with < 20% Feature Music programming):

	<b>Population Count</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
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Level 1	0 – 249,999	\$631	\$644	\$657	\$670	\$683
Level 2	250,000 – 499,999	\$631	\$644	\$657	\$670	\$683
Level 3	500,000 – 999,999	\$631	\$644	\$657	\$670	\$683
Level 4	1,000,000 – 1,499,999	\$788	\$804	\$820	\$836	\$853
Level 5	1,500,000 – 1,999,999	\$985	\$1,005	\$1,025	\$1,045	\$1,066
Level 6	2,000,000 – 2,499,999	\$1,182	\$1,206	\$1,230	\$1,254	\$1,279
Level 7	2,500,000 – 2,999,999	\$1,379	\$1,406	\$1,434	\$1,463	\$1,492
Level 8	3,000,000 and above	\$1,970	\$2,009	\$2,049	\$2,090	\$2,132

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with  $\geq 20\%$  Feature Music programming:

	<b>Population Count</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	0 – 249,999	\$138	\$140	\$143	\$146	\$149
Level 2	250,000 – 499,999	\$230	\$234	\$239	\$244	\$248
Level 3	500,000 – 999,999	\$345	\$352	\$359	\$366	\$373
Level 4	1,000,000 – 1,499,999	\$459	\$468	\$478	\$487	\$497
Level 5	1,500,000 – 1,999,999	\$574	\$586	\$597	\$609	\$622
Level 6	2,000,000 – 2,499,999	\$689	\$702	\$716	\$731	\$745
Level 7	2,500,000 – 2,999,999	\$804	\$820	\$836	\$853	\$870
Level 8	3,000,000 and above	\$1,149	\$1,171	\$1,195	\$1,219	\$1,243

(ii) Talk fees for stations with  $< 20\%$  Feature Music programming:

	<b>Population Count</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Level 1	0 – 249,999	\$138	\$140	\$143	\$146	\$149
Level 2	250,000 – 499,999	\$138	\$140	\$143	\$146	\$149
Level 3	500,000 – 999,999	\$138	\$140	\$143	\$146	\$149
Level 4	1,000,000 – 1,499,999	\$161	\$164	\$167	\$170	\$174
Level 5	1,500,000 – 1,999,999	\$201	\$205	\$209	\$213	\$218
Level 6	2,000,000 – 2,499,999	\$241	\$246	\$251	\$256	\$261

Level 7	2,500,000 – 2,999,999	\$281	\$287	\$293	\$299	\$305
Level 8	3,000,000 and above	\$402	\$410	\$418	\$427	\$435

(4) For the performance of any other such compositions, in 2013 through 2017, \$1.

(e) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI and SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

\* \* \* \* \*

6. Section 381.7 is amended as follows:

- a. By revising paragraphs (b)(1)(i)(A)-(D) and (b)(1)(ii)(A)-(D);
- b. By revising paragraphs (b)(2)(i)-(iv);

c. In paragraph (b)(4), by removing “2008-2012” and adding “2013-2017” in its place; and

d. In paragraph (b)(5), by removing “2012” and adding “2017” in its place.

The revisions to § 381.7 read as follows:

**§ 381.7 Recording rights, rates and terms.**

\* \* \* \* \*

(b)\* \* \*

(1)(i) \* \* \*

2013-2017

(A) Feature . . . . . \$116.37

(B) Concert feature (per minute) . . . . . \$ 34.95

(C) Background . . . . . \$ 58.81

(D) Theme:

(1) Single program or first series program . . . . . \$ 58.81

(2) Other series program . . . . . \$ 23.88

(ii) \* \* \*

2013-2017

(A) Feature . . . . . \$ 9.62

(B) Concert feature (per minute) . . . . . \$ 2.53

(C) Background . . . . . \$ 4.18

(D) Theme:

(1) Single program or first series of program . . . . . \$ 4.18

(2) Other series program .....	\$ 1.66
* * * * *	
(2) * * *	
	2013-2017
(i) Feature .....	\$ 12.60
(ii) Concert feature (per minute) .....	\$ 18.49
(iii) Background .....	\$ 6.31
(iv) Theme:	
(A) Single program or first series program .....	\$ 6.31
(B) Other series program .....	\$ 2.52
* * * * *	

**§ 381.8 [Removed and Reserved]**

7. Remove and reserve § 381.8.

8. Section 381.10 is amended as follows:

a. In paragraph (a), by removing “2007” and adding “2013” in its place in each place it appears and by removing “2006” and adding “2012” in its place, and by removing “On each December 1” and adding “On or before each December 1” in its place;

b. By revising paragraph (b);

c. In paragraph (c), by adding “the” before “rates”, by removing “381.5” and adding “381.5(c)(3)” in its place, and by adding “(30)” after “thirty”.

The revisions to § 381.10 read as follows:

**§ 381.10 Cost of living adjustment.**

\* \* \* \* \*

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the **Federal Register** a revised schedule of the rates for § 381.5(c)(3), the rate to be charged for compositions in the repertory of SESAC, which shall adjust the royalty amounts established in a dollar amount according to the greater of

(1) The change in the cost of living determined as provided in paragraph (a) of this section, or

(2) Two percent (2%).

(3) Such royalty rates shall be fixed at the nearest dollar.

\* \* \* \* \*

Dated: April 20, 2012

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Stanley C. Wisniewski,  
U.S. Copyright Royalty Judge.

**[BILLING CODE: 1410-72-P]**

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