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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.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed rates and terms for the performance of musical compositions by Public Broadcasting Service (“PBS”), National Public Radio (“NPR”) and other public broadcasting entities and for the use of published pictorial, graphic and sculptural works by public broadcasting entities pursuant to the statutory license under section 118 of the Copyright Act for the period 2013-2017.

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. 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 2nd 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.

SUPPLEMENTARY INFORMATION:

On April 25, 2012, the Copyright Royalty Judges published for comment in the **Federal Register** proposed rates and terms for the 2013-2017 license period for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting under section 118 of the Copyright Act, title 17 of the United States Code. 77 FR 24662 (April 25, 2012). The proposed rates and terms were submitted to the Judges by certain parties who filed petitions to participate in the proceeding.¹ However, the Judges received no proposal for two sections, namely, § 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 PBS-distributed programs. Consequently, the Judges proposed removing these sections and reserving the section numbers.

¹ For the general background of this proceeding, including the list of parties who filed a petition to participate, see 77 FR 24663 (April 25, 2012).

In response to the April 25 proposed rule, the Judges received from PBS and NPR a joint proposal setting forth rates and terms for § 381.4 and § 381.8.² Section 801(b)(7)(A) of the Copyright Act, in pertinent part, requires the Judges to publish in the **Federal Register** rates and terms negotiated by copyright owners and public broadcasting entities in order to afford those who would be bound by such rates and terms an opportunity to comment and/or object to the proposal. Today's notice fulfills this requirement.

The public may comment on and object to 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.

2. Section 381.4 is amended as follows:

² Comments regarding the other proposed changes were also received. Such comments will be addressed in a future publication adopting final regulations.

a. By revising paragraphs (a)(1)-(8); and

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

The revisions read as follows:

§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

* * * * *

(a) *Determination of royalty rate.*

(1) For performance of such work in a feature presentation of PBS:

2013-2017 \$232.18

(2) For performance of such a work as background or theme music in a PBS program:

2013-2017 \$ 58.51

(3) For performance of such a work in a feature presentation of a station of PBS:

2013-2017 \$ 19.84

(4) For performance of such a work as background or theme music in a program of a station of PBS:

2013-2017 \$ 4.18

(5) For the performance of such a work in a feature presentation of NPR:

2013-2017 \$ 23.53

(6) For the performance of such a work as background or theme music in an NPR program:

2013-2017 \$ 5.70

(7) For the performance of such a work in a feature presentation of a station of NPR:

2013-2017 \$ 1.66

(8) For the performance of such a work as background or theme music in a program of a station of NPR:

2013-2017 \$.59

* * * * *

3. Section 381.8 is amended as follows:

- a. By revising paragraphs (b)(1)(i)-(ii); and
- b. In paragraph (f), by removing “2012” and adding “2017” in its place.

The revisions read as follows:

§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

| | 2013-2017 |
|--|-----------|
| (A) For featured display of a work | \$70.75 |
| (B) For background and montage display | \$34.50 |
| (C) For use of a work for program identification or for thematic use | \$139.46 |
| (D) For the display of an art reproduction copyrighted separately | |

from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule \$45.82

(ii) For such uses in other than PBS-distributed programs:

2013-2017

(A) For featured display of a work \$45.82

(B) For background and montage display \$23.48

(C) For use of a work for program identification or for thematic use \$93.65

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule \$23.49

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Dated: June 20, 2012

 Suzanne M. Barnett,
 Chief Copyright Royalty Judge.

[BILLING CODE: 1410-72-P]

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