



LIBRARY OF CONGRESS

1410-72-P

Copyright Royalty Board

37 CFR Part 370

[Docket No. RM 2008-7]

**Notice and Recordkeeping for Use of Sound Recordings Under Statutory License;
Technical Amendment**

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; amendment.

SUMMARY: On August 10, 2016, the Copyright Royalty Judges (Judges) published in the **Federal Register** for comment proposed amendments to regulations governing reporting requirements for noncommercial webcasters, including noncommercial educational webcasters, that pay no more than the minimum fee for their use of sound recordings under the applicable statutory licenses. The Judges received three comments. The Judges hereby publish the final rule.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability Date: May 19, 2016.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle at (202) 707-7658 or at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

In 2009, the Copyright Royalty Judges (Judges) published regulations concerning reporting requirements for webcasters streaming sound recordings under statutory licenses described in 17 USC 112 and 114. *See* 79 FR 25009. On June 21, 2016, the

Judges published a technical amendment to the regulations. 81 FR 40190. Later that same day, the Judges received a Joint Petition of the National Association of Broadcasters and the National Religious Broadcasters Noncommercial Music License Committee (together, Broadcasters) to Amend Final Rule Regarding Reporting Requirements (Joint Motion).

The Broadcasters contended that by removing the definition of “Minimum Fee Broadcaster” the Judges had failed to effect their intent. Joint Motion at 7. The Judges agreed that the regulation as amended on June 21, 2016, did not effect their intent because it defined the term “Eligible Minimum Fee Webcaster” too narrowly and therefore arguably excluded the webcasts of noncommercial minimum fee broadcasters, a category that the Judges had intended to include. Accordingly, on August 10, 2016, the Judges proposed a second amendment to the regulations and published it for comment. 81 FR 52782.

The Broadcasters filed a joint comment supporting adoption of the proposed second amendment to the regulations. The Intercollegiate Broadcasting System (IBS), which had appealed the prior iterations of the regulations to the U.S. Court of Appeals for the D.C. Circuit, filed a comment that included the following language.

Given the limited scope of the Notice and without prejudice to its objections to the \$ 500 annual fee, the \$ 100 opt-out fee, and the reporting requirements, IBS interposes no objection to the Notice.

IBS Comment at 2. The Judges interpret that comment as not opposing the proposed second amendment.¹

¹ A third comment was filed by Adam Stein, but the Judges found it to be an unreasonable objection as Mr. Stein offered no support for his allegations, which appeared to be based upon a fundamental misunderstanding of compulsory licenses.

List of Subjects in 37 CFR Part 370

Copyright.

Final regulations

In consideration of the foregoing, the Copyright Royalty Judges amend 37 CFR part 370 as follows.

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

1. The authority citation for part 370 continues to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(4)(A).

2. Amend § 370.4 in paragraph (b) by revising the definition of “Eligible Minimum Fee Webcaster” to read as follows:

§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

* * * * *

(b) * * *

Eligible Minimum Fee Webcaster means a nonsubscription transmission service whose payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114; and:

- (i) Is a licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission; or
- (ii) Is directly operated by, or affiliated with and officially sanctioned by, a domestically accredited primary or secondary school, college, university, or other post-secondary degree-granting institution; and

(A) The digital audio transmission operations of which are, during the course of the

year, staffed substantially by students enrolled in such institution;

(B) Is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes; and

(C) Is not a “public broadcasting entity” (as defined in 17 U.S.C. 118(f)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

* * * * *

Dated: November 15, 2016

Suzanne M. Barnett
Chief Copyright Royalty Judge

APPROVED

Carla D. Hayden
Librarian of Congress
[FR Doc. 2016-29761 Filed: 12/12/2016 8:45 am; Publication Date: 12/13/2016]