



1410-72-P

**LIBRARY OF CONGRESS**

**Copyright Royalty Board**

**37 CFR Part 381**

**[Docket No. 16-CRB-0002-PBR (2018-2022)]**

**Determination of Rates and Terms for Public Broadcasting (PB III)**

**AGENCY: Copyright Royalty Board (CRB), Library of Congress.**

**ACTION:** Proposed rule.

**SUMMARY:** The Copyright Royalty Judges solicit comments on proposed rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2018, and ending on December 31, 2022.

**DATES:** Comments and objections, if any, are due on or before **[INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments and objections, identified by docket number 16-CRB-0002-PBR (2018-2022), by any of the following methods:

*CRB's electronic filing application:* Submit comments online in eCRB at <https://app.crb.gov/>.

*U.S. mail:* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

*Overnight service (only USPS Express Mail is acceptable):* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

*Commercial courier:* Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE,

Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

*Hand delivery:* Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

*Instructions:* Unless submitting online, commenters must submit an original, five paper copies, and an electronic version on a CD. All submissions must include the CRB's name and docket number. All submissions will be posted without change to eCRB on <https://www.crb.gov> including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 16-CRB-0002-PBR (2018-2022). For documents not yet uploaded to eCRB (because it is a new system), go to the agency website at <https://www.crb.gov/> or contact the CRB Program Specialist.

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, by telephone at (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. 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 2018-2022 on January 5, 2016. 77 FR 71104.

In the *Federal Register* notice, the Judges requested interested parties to submit petitions to participate. 81 FR 256 (January 5, 2016). Petitions to Participate (“PTP”s) were received from: The American Society of Authors, Composers and Publishers (“ASCAP”); SESAC, Inc.; Broadcast Music, Inc. (“BMI”); Educational Media Foundation (“EMF”); National Public Radio (“NPR”) and the Public Broadcasting Service (“PBS”), jointly; National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”); the Church Music Publishers’ Association (“CMPA”) <sup>1</sup>; the National Music Publishers’ Association (“NMPA”), The Harry Fox Agency (“HFA”), National Association of College and University Business Officers (“NACUBO”), and David Powell.<sup>2</sup>

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 written direct statements no later than November 7, 2016. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order (Mar. 25, 2016). The Judges amended the case schedule twice to accommodate ongoing negotiations. *See* Order for Further Proceedings and Modified Case Schedule (Aug. 12, 2016). In July and September 2016, several participants filed notices of settlement and proposed rates and terms for adoption. No participant filed a written direct statement. *See* Order Requiring Submission of Proposed

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<sup>1</sup> CMPA’s PTP was filed late with permission of the Judges. *See* Order Granting Church Music Publishers’ Motion to Accept Late Petition to Participate (May 6, 2016). The Judges received no written direct statement from and no notice of settlement from or regarding CMPA.

<sup>2</sup> Mr. Powell’s Petition to Participate was dismissed on August 16, 2016. Order Dismissing Petition to Participate of David Powell.

Regulations by National Public Radio and Public Broadcasting System at 1 (Oct. 19, 2017).

There are two ways 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 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 one agreement in this category for which no further action is required.<sup>4</sup>

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 using the same license and submit them to the Judges for approval. Section 801(b)(7)(A) provides that 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 that the Copyright Royalty Judges may decline to adopt the agreement as a

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<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).

<sup>4</sup> The Judges received an agreement from BMI on October 24, 2017. They anticipate receiving two others (from ASCAP and SESAC). Submission of NPR and PBS at 1 (Oct. 25, 2017).

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).

On or about September 1, 2017, the Judges received a joint submission from ASCAP, BMI, HFA, NACUBO, NMPA, NRBNMLC, and SESAC containing proposed regulations that integrated the several separately filed proposals within this category. On October 25, 2017, the Judges received two more proposals within this category, one from NPR and PBS and a joint proposal from HFA, NMPA, PBS, NPR, and CPB.<sup>5</sup>

#### **NACUBO Joint Proposals**

The joint proposals of NACUBO and each of ASCAP, BMI, and SESAC propose to modify the royalty rates set forth in § 381.5. The rates proposed in the NACUBO/ BMI and NACUBO/ ASCAP submissions reflect a modification of the fees in different rate tiers. NACUBO/ BMI Joint Proposal at 5, App. A. NACUBO/ASCAP Joint Proposal at 5, App. A. The NACUBO/ SESAC submission retains a flat rate which they propose adjusting, starting in 2018, by the change in the Consumer Price Index or one-and-a-half percent, whichever is greater. NACUBO/ SESAC Joint Proposal App. A.

#### **NRBNMLC Joint Proposals**

The joint proposals entered into by NRBNMLC and each of HFA/NMPA, ASCAP, BMI, and SESAC propose carrying forward unchanged the current provisions

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<sup>5</sup> The PTP from NPR and PBS covers CPB (the Corporation for Public Broadcasting).

set forth in §§ 381.1 (except to replace “January 1, 2013” with “January 1, 2018” and “December 31, 2017” with “December 31, 2022”), 381.2, 381.9, and 381.11.

The joint proposal between NMPA/HFA and NRBNMLC states that the rates in § 381.7(b)(4) should be modified. NMPA/HFA and NRBNMLC Joint Proposal at 2-3.

Each of the joint proposals between NRBNMLC and ASCAP, BMI and SESAC propose modifications to § 381.6. ASCAP and NRBNMLC Joint proposal at 3; BMI and NRBNMLC Joint proposal at 5; SESAC and NRBNMLC Joint proposal at 3.

### **NPR/PBS Joint Proposals**

NPR and PBS filed a joint proposal with NMPA and HFA to modify fees in § 381.7, a change that reflects the same percentage increase made in the prior rate period because such increase “is fair and reasonable.” HFA/NMPA and NPR/PBS Joint Proposal at 2.

NPR and PBS filed proposed changes to fees in § 381.4 pursuant to negotiated license agreements with ASCAP, BMI, and SESAC. The changes conform to analogous changes in §§ 381.5 and 381.6.

As noted above, the members of the public and participants in this rate proceeding may comment and object to any or all of the proposed regulations contained in this notice.

### **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 as set forth below:

**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. In § 381.1 remove “2013” and, in its place, add “2018”, and remove “2017” and, in its place, add “2022”.

3. Amend § 381.4 as follows:

a. Revise paragraph (a);

b. In paragraph (c) remove “2013” and, in its place, add “2018”, and remove “2017” and, in its place, add “2022”; and

c. Remove paragraph (d).

The revision reads 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.* The following rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for

compositions which are the subject of voluntary license agreements: the royalty shall be \$1.

\* \* \* \* \*

4. Amend § 381.5 by revising paragraph (c) 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>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Level 1	< 1,000	\$352	\$359	\$366	\$373	\$380
Level 2	1,000 - 4,999	\$407	\$415	\$423	\$431	\$440
Level 3	5,000 - 9,999	\$557	\$568	\$579	\$591	\$603
Level 4	10,000 - 19,999	\$722	\$736	\$751	\$766	\$781
Level 5	20,000 +	\$908	\$926	\$945	\$964	\$983

(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>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Level 1	< 1,000	\$352	\$359	\$366	\$373	\$380
Level 2	1,000 - 4,999	\$407	\$415	\$423	\$431	\$440
Level 3	5,000 - 9,999	\$557	\$568	\$579	\$591	\$603
Level 4	10,000 - 19,999	\$722	\$736	\$751	\$766	\$781
Level 5	20,000 +	\$908	\$926	\$945	\$964	\$983

(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) 2018: The 2017 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(ii) 2019: The 2018 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(iii) 2020: The 2019 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(iv) 2021: The 2020 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(v) 2022: The 2021 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) One and one-half percent (1.5%).

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

\* \* \* \* \*

5. Amend § 381.6 as follows:

a. Remove from the first sentence of paragraph (a) the words “which are”;

and

b. Revise paragraph (d).

The revision reads as follows:

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

\* \* \* \* \*

(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):

	Population Count	Calendar Years				
		2018	2019	2020	2021	2022
Level 1	0 – 249,999	\$697	\$711	\$725	\$739	\$754
Level 2	250,000 – 499,999	\$1,243	\$1,268	\$1,294	\$1,319	\$1,346
Level 3	500,000 – 999,999	\$1,864	\$1,901	\$1,939	\$1,978	\$2,017
Level 4	1,000,000 – 1,499,999	\$2,486	\$2,535	\$2,586	\$2,638	\$2,691
Level 5	1,500,000 – 1,999,999	\$3,107	\$3,169	\$3,232	\$3,297	\$3,363
Level 6	2,000,000 – 2,499,999	\$3,728	\$3,803	\$3,879	\$3,956	\$4,035
Level 7	2,500,000 – 2,999,999	\$4,349	\$4,436	\$4,525	\$4,615	\$4,708
Level 8	3,000,000 and above	\$6,214	\$6,338	\$6,465	\$6,594	\$6,726

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

	Population Count	Calendar Years				
		2018	2019	2020	2021	2022
Level 1	0 – 249,999	\$697	\$711	\$725	\$739	\$754
Level 2	250,000 – 499,999	\$697	\$711	\$725	\$739	\$754
Level 3	500,000 – 999,999	\$697	\$711	\$725	\$739	\$754
Level 4	1,000,000 – 1,499,999	\$870	\$887	\$905	\$923	\$942
Level 5	1,500,000 – 1,999,999	\$1,087	\$1,109	\$1,131	\$1,154	\$1,177
Level 6	2,000,000 – 2,499,999	\$1,305	\$1,331	\$1,357	\$1,384	\$1,412
Level 7	2,500,000 – 2,999,999	\$1,522	\$1,552	\$1,583	\$1,615	\$1,647
Level 8	3,000,000 and above	\$2,175	\$2,218	\$2,262	\$2,308	\$2,354

(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):

	Population Count	Calendar Years				
		2018	2019	2020	2021	2022
Level 1	0 – 249,999	\$697	\$711	\$725	\$739	\$754
Level 2	250,000 – 499,999	\$1,243	\$1,268	\$1,294	\$1,319	\$1,346
Level 3	500,000 – 999,999	\$1,864	\$1,901	\$1,939	\$1,978	\$2,017
Level 4	1,000,000 – 1,499,999	\$2,486	\$2,535	\$2,586	\$2,638	\$2,691
Level 5	1,500,000 – 1,999,999	\$3,107	\$3,169	\$3,232	\$3,297	\$3,363
Level 6	2,000,000 – 2,499,999	\$3,728	\$3,803	\$3,879	\$3,956	\$4,035
Level 7	2,500,000 – 2,999,999	\$4,349	\$4,436	\$4,525	\$4,615	\$4,708
Level 8	3,000,000 and above	\$6,214	\$6,338	\$6,465	\$6,594	\$6,726

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

	Population Count	Calendar Years				
		2018	2019	2020	2021	2022
Level 1	0 – 249,999	\$697	\$711	\$725	\$739	\$754
Level 2	250,000 – 499,999	\$697	\$711	\$725	\$739	\$754
Level 3	500,000 – 999,999	\$697	\$711	\$725	\$739	\$754
Level 4	1,000,000 – 1,499,999	\$870	\$887	\$905	\$923	\$942
Level 5	1,500,000 – 1,999,999	\$1,087	\$1,109	\$1,131	\$1,154	\$1,177
Level 6	2,000,000 – 2,499,999	\$1,305	\$1,331	\$1,357	\$1,384	\$1,412

Level 7	2,500,000 – 2,999,999	\$1,522	\$1,552	\$1,583	\$1,615	\$1,647
Level 8	3,000,000 and above	\$2,175	\$2,218	\$2,262	\$2,308	\$2,354

(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>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Level 1	0 – 249,999	\$152	\$155	\$158	\$161	\$164
Level 2	250,000 – 499,999	\$253	\$258	\$263	\$268	\$274
Level 3	500,000 – 999,999	\$380	\$388	\$396	\$403	\$411
Level 4	1,000,000 – 1,499,999	\$507	\$517	\$527	\$538	\$548
Level 5	1,500,000 – 1,999,999	\$634	\$647	\$660	\$673	\$686
Level 6	2,000,000 – 2,499,999	\$760	\$775	\$790	\$806	\$822
Level 7	2,500,000 – 2,999,999	\$887	\$905	\$923	\$941	\$960
Level 8	3,000,000 and above	\$1,268	\$1,293	\$1,318	\$1,344	\$1,371

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

	<b>Population Count</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Level 1	0 – 249,999	\$152	\$155	\$158	\$161	\$164
Level 2	250,000 – 499,999	\$152	\$155	\$158	\$161	\$164
Level 3	500,000 – 999,999	\$152	\$155	\$158	\$161	\$164
Level 4	1,000,000 – 1,499,999	\$177	\$181	\$185	\$188	\$192
Level 5	1,500,000 – 1,999,999	\$222	\$227	\$231	\$236	\$240
Level 6	2,000,000 – 2,499,999	\$266	\$271	\$277	\$282	\$288
Level 7	2,500,000 – 2,999,999	\$311	\$317	\$323	\$330	\$336
Level 8	3,000,000 and above	\$444	\$452	\$461	\$470	\$480

(4) For the performance of any other such compositions, in 2018 through 2022,

\$1.

\* \* \* \* \*

6. Amend § 381.7 as follows:

- a. Revise paragraphs (b)(1)(i)(A) through (D) and (b)(1)(ii)(A) through (D);
- b. Revise paragraph (b)(2)(i) through (iv); and
- c. Revise paragraph (b)(4)(i) through (iii).

The revisions read as follows:

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

\* \* \* \* \*

(b)\* \* \*

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

2018-2022

(A) Feature ..... \$118.70

(B) Concert feature (per minute) ..... \$ 35.65

(C) Background ..... \$ 59.99

(D) Theme:

(1) Single program or first series program ..... \$ 59.99

(2) Other series program ..... \$ 24.36

(ii) \* \* \*

2018-2022

(A) Feature .....	\$ 9.81
(B) Concert feature (per minute) .....	\$ 2.58
(C) Background .....	\$ 4.26
(D) Theme:	
(1) Single program or first series of program .....	\$ 4.26
(2) Other series program .....	\$ 1.69

\* \* \* \* \*

(2) \* \* \*

2018-2022

(i) Feature .....	\$ 12.85
(ii) Concert feature (per minute) .....	\$ 18.86
(iii) Background .....	\$ 6.44
(iv) Theme:	
(A) Single program or first series program .....	\$ 6.44
(B) Other series program .....	\$ 2.57

\* \* \* \* \*

(4) \* \* \*

2018-2022

(i) Feature .....	\$ .81
(ii) Feature (concert) (per half hour) .....	\$ 1.69
(iii) Background .....	\$ .41

\* \* \* \* \*

7. Amend § 381.10 as follows:

a. In paragraph (a), remove “2013” and, in its place, add “2018”, and remove “2017” and, in its place, add “2022”;

b. Revise paragraph (b);

The revision reads 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) One-and-a-half percent (1.5%).

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

\* \* \* \* \*

Dated: October 31, 2017.  
**Suzanne M. Barnett,**  
*Chief U.S. Copyright Royalty Judge.*  
[FR Doc. 2017-23991 Filed: 11/3/2017 11:15 am; Publication Date: 11/7/2017]