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Copyright Royalty Board

[Docket No. 20-CRB-0008-CA (2020-2025)]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed settlement; request for comments.

SUMMARY: The Copyright Royalty Judges publish for comment a proposed settlement governing royalty rates and terms for the distant retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers.

DATES: Comments are due no later than [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by docket number 20-CRB-0008-CA, online through eCRB at <https://app.crb.gov>.

Instructions: All submissions received must include the Copyright Royalty Board name and the docket number for this proceeding. All comments received will be posted without change to eCRB at <https://app.crb.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at <https://app.crb.gov> and perform a case search for docket 20-CRB-0008-CA.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707-7658, or by e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION: On January 26, 2021, the Copyright Royalty Judges (Judges) received a Joint Notice of Settlement of Participating Parties¹ informing the Judges that they have agreed not to seek a quinquennial adjustment in the existing Section 111 royalty rates or gross receipts limitations pursuant to 17 U.S.C. 804(b)(1)(A) - (B) for the 2020-2025 period. As a result, the Participating Parties request that the Judges terminate this proceeding without making any changes in (1) the royalty rates currently set forth in 17 U.S.C. 111(d)(1)(B) and 37 CFR 256.2(c) - (d);² and (2) the gross receipts limitations set forth in 17 U.S.C. 111(d)(1)(E) - (F). Joint Notice at 2. The Judges hereby publish the proposed settlement and request comments from interested parties as required by 17 U.S.C. 801(b)(7)(A).

Section 111 of the Copyright Act grants a statutory copyright license to cable television systems for the distant retransmission of over-the-air television and radio broadcast stations to their subscribers. 17 U.S.C. 111(c). In exchange for the license, cable operators submit to the Copyright Office semiannually royalty payments and statements of account detailing their retransmissions. 17 U.S.C. 111(d)(1). The Copyright Office deposits the royalties into the United States Treasury for later distribution to copyright owners of the broadcast programming that the cable systems retransmit. 17 U.S.C. 111(d)(2).

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d)(1). Royalty rates are based upon a cable system's gross receipts from subscribers who receive retransmitted broadcast signals. For rate

¹ The Participating Parties are American Society of Composers, Authors and Publishers, Broadcast Music, Inc., Canadian Claimants Group (by Canadian Broadcasting Corporation), Devotional Claimants (Crystal Cathedral Ministries, *et al.*), Global Music Rights, LLC, Joint Sports Claimants, Motion Picture Association, Commercial Television Claimants (through the National Association of Broadcasters), NPR Claimants (through National Public Radio, Inc.), NCTA-The Internet & Television Association, Public Television Claimants (through Public Broadcasting Service), and SESAC Performing Rights, LLC.

² The Judges assume that the Participating Parties' reference to 37 CFR 256.2(c) & (d), which was a Copyright Office regulation relating to the Judges' predecessor, is intended to refer to paragraphs (c) - (d) of 37 CFR 387, which the Judges adopted at the conclusion of the last cable rate proceeding. *See* 81 FR 62812 (Sept. 13, 2016) and 81 FR 24523-24 (Apr. 26, 2016).

calculation purposes, cable systems are divided into three tiers (small, medium, and large) based on their gross receipts. 17 U.S.C. 111(d)(1)(B) through (F). Both the applicable rates and the tiers are subject to adjustment. 17 U.S.C. 801(b)(2).

Every five years persons with a significant interest in the royalty rates may file petitions to initiate a proceeding to adjust the rates. 17 U.S.C. 804(a) - (b). No person with a significant interest filed a petition to initiate a proceeding in 2020. Therefore, the Judges initiated a rate adjustment proceeding by publishing a notice and request for petitions to participate in the *Federal Register*. 85 FR 34467 (June 4, 2020). The Judges accepted the petitions to participate of each of the Participating Parties and commenced a Voluntary Negotiation Period (VNP). Notice of Participants, Commencement of Voluntary Negotiation Period, and Scheduling Order (Oct. 20, 2020).³ In response to that Notice and Order, the Participating Parties have notified the Judges that they have agreed not to seek a quinquennial adjustment in the existing Section 111 royalty rates or gross receipts limitations pursuant to 17 U.S.C. 804(b)(1)(A) - (B) for the 2020-2025 period. They request that the Judges terminate this proceeding without making any changes in the applicable royalty rates and gross receipts limitations.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided the parties submit the negotiated rates and terms to the Judges for approval. That provision directs the Judges to provide those who would be bound by the negotiated rates and terms an opportunity to comment on the agreement. Unless a participant in a proceeding objects and the Judges conclude that the agreement does not provide a

³ The Judges also received a petition to participate from Circle God Network Inc. (through David Powell), which the Judges concluded failed to state why it believed it had a significant interest in the proceeding. The Judges subsequently rejected Mr. Powell’s petition to participate, Order Rejecting David Powell’s Petition to Participate and Permitting Filing of an Amended Petition (Oct. 20, 2020), and later dismissed Mr. Powell from the proceeding. Order Dismissing David Powell (Nov. 5, 2020).

reasonable basis for setting statutory rates or terms, the Judges adopt the negotiated rates and terms. 17 U.S.C. 801(b)(7)(A).

If the Judges adopt the proposed rates and terms pursuant to this provision for the 2020-2025 rate period, the adopted (and thus, existing) rates and terms and gross receipts limitations will continue to be binding on all cable systems that retransmit distant over-the-air television and radio broadcast stations to their subscribers and on all copyright owners of the broadcast programming that the cable systems retransmit during the license period 2020-2025.

Interested parties may comment and Participating Parties may object to the proposed settlement referenced in this notice. *See* 17 U.S.C. 801(b)(7)(A). Such comments and objections, if any, must be submitted no later than [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: January 29, 2021.

Jesse M. Feder,
Chief Copyright Royalty Judge.
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