



## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 390

[Docket No. 23-CRB-0007-AA]

### Determination of Adjustment to Administrative Assessment to Fund Mechanical Licensing Collective

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

**ACTION:** Final rule; adoption of voluntary agreement.

**SUMMARY:** The Copyright Royalty Judges publish final regulations that adjust the amounts and terms of the Administrative Assessment to fund the Mechanical Licensing Collective.

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

*Applicability date:* These rates and terms are applicable starting January 1, 2023.

**ADDRESSES:** *Docket:* For access to the docket to read background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/>, and search for docket number 23-CRB-0007-AA.

**FOR FURTHER INFORMATION CONTACT:** Anita Brown, (202) 707-7658, [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** On May 31, 2023, the Mechanical Licensing Collective (MLC) and the Digital Licensee Coordinator (DLC) filed a Joint Petition to Commence Proceeding to Adjust Administrative Assessment by Adoption of a Voluntary Agreement (Petition) and a Joint Motion to Adopt Voluntary Agreement and Proposed Regulations (Voluntary Agreement). By notice published in the *Federal Register* the Copyright Royalty Judges (Judges) commenced the captioned proceeding to determine an

adjustment to the administrative assessment that digital music providers and any significant nonblanket licensees must pay to fund the operations of the Mechanical Licensing Collective. 88 FR 42396 (June 30, 2023) (Notice of Commencement). The Notice of Commencement included a request for petitions to participate and a schedule for submissions and proceedings.

Only two parties filed Petitions to Participate: the Mechanical Licensing Collective and the Digital Licensee Coordinator; participation in this proceeding was required by the two Petitioners. The Judges gave notice of the identity of petitioners as required by 37 CFR 355.2(f) and, in light of the Voluntary Agreement, suspended the case schedule. *See* Notice of Identity of Petitioners and Case Scheduling Order (July 18, 2023).

Section 115(d)(7)(D)(v) of the Copyright Act authorizes the Judges to approve and adopt a negotiated agreement that has been agreed to by the Mechanical Licensing Collective and the Digital Licensee Coordinator in lieu of a determination of the administrative assessment. An administrative assessment adopted under sec. 115(d)(7)(D)(v) “shall apply to all digital music providers and significant nonblanket licensees engaged in covered activities during the period the administrative assessment is in effect.” *Id.*

However, the Judges, in their discretion, may reject a proposed settlement for good cause shown. 17 U.S.C. 115(d)(7)(D)(v) and 37 CFR 355.6(d). Section 355.4(c)(4) of 37 CFR establishes a process for non-settling participants to comment on a proposed settlement and for the settling participants to respond. Because there were no non-settling participants in the instant proceeding, the proposed settlement was unopposed. Moreover, the participants explained to the Judges’ satisfaction how the Proposed Regulations comply with the provisions of the Copyright Act. *See generally* Voluntary Agreement. The Judges, finding no cause to reject the proposed settlement embodied in

the Voluntary Agreement, hereby adopt it, and publish these final regulations implementing the settlement.

### **List of Subjects in 37 CFR Part 390**

Copyright, Licensing and registration, Music, Phonorecords, Recordings, Royalties.

### **Final Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 390 as follows:

### **PART 390—AMOUNTS AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE**

1. The authority citation for part 390 continues to read as follows:

**Authority:** 17 U.S.C. 115, 801(b).

#### **§ 390.1 [Amended]**

2. Amend § 390.1 as follows:

- a. In the definition of “Annual Assessment” remove “2021” and add in its place “2023”.

- b. Remove the definition of “Certified Minimum Fee Disclosure”.

3. Amend § 390.2 by revising paragraphs (a), (b), and (c)(1) introductory text to read as follows:

#### **§ 390.2 Amount of assessments.**

- (a) *2023 Annual Assessment.* The Annual Assessment for the calendar year 2023 shall be in the amount of \$32,900,000.

- (b) *2024 Annual Assessment.* The Annual Assessment for the calendar year 2024 shall be in the amount of \$39,050,000.

(c) \*\*\* (1) For the calendar year 2025 and all subsequent years, the amount of the Annual Assessment will be automatically adjusted by increasing the amount of the Annual Assessment of the preceding calendar year by the lesser of:

\* \* \* \* \*

4. Amend § 390.3 by:

a. In paragraph (b);

i. Removing “2021” and adding in its place “2024”;

ii. Removing “2019” and adding in its place “2022”; and

iii. Removing “2020” and adding in its place “2023”.

b. Remove paragraph (c) and redesignate paragraphs (d) and (e) as paragraphs (c) and (d).

c. Revise newly redesignated paragraph (c) introductory text.

The revision reads as follows:

**§ 390.3 Annual minimum fees**

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(c) *Calculation by the MLC.* The MLC will calculate each Licensee's annual minimum fee based on usage reporting received from Licensees pursuant to 17 U.S.C. 115(d)(4). The MLC shall send invoices for the appropriate annual minimum fee to each Licensee. Licensees shall pay the annual minimum fee invoices from the MLC by the later of:

\* \* \* \* \*

5. Amend § 390.4 as follows:

a. In paragraph (b) remove the words “, except that the calculation period for the Quarterly Allocation for the first and second quarters of 2021 shall be the same as for the annual minimum fee for the 2021 Annual Assessment, and shall be calculated based upon

the information provided in the Certified Minimum Fee Disclosures, as required by this part.”

b. Remove paragraph (c)(2)(i)(D) and redesignate paragraphs (c)(2)(i)(E) and (F) as (c)(2)(i)(D) and (E).

c. Revise paragraph (h).

The revision reads as follows:

**§ 390.4 Annual Assessment allocation and payment.**

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(h) *2023 Annual Assessment allocation and payment.* The 2023 Annual Assessment shall be paid in two separate processes:

(1) The MLC will collect from Licensees the amount of \$30,235,650 pursuant to the standard procedures outlined in the other provisions of this part for collection of the 2023 Annual Assessment, including the collection of Annual Minimum Fees and Quarterly Allocations.

(2) The MLC will collect from Allocated Licensees the amount of \$2,664,350 through a separately invoiced, one-time collection, with no minimum fees applied. The amount shall be divided into two equal parts and allocated among Licensees using the formulas set forth in paragraphs (a)(1) and (a)(2) of this section. The calculation period shall be the first three months of 2023. The MLC may invoice for this collection at any time, with payment to be due no later than 45 days after receipt of the invoice from the MLC.

Dated: September 25, 2023.

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David P. Shaw,  
Chief Copyright Royalty Judge.

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David R. Strickler,  
Copyright Royalty Judge.

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Steve Ruwe,  
Copyright Royalty Judge.

Approved by:

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Carla D. Hayden,  
Librarian of Congress.

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