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Copyright Royalty Board

37 CFR Part 385

[Docket No. Docket No. 23-CRB-0014-PR-COLA (2024)]

Cost of Living Adjustment to Royalty Rates and Terms for Making and Distributing Phonorecords

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates for the statutory license for making and distributing phonorecords of nondramatic musical works regarding physical phonorecords and Permanent Downloads.

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

Applicability date: These rates and terms are applicable during the period from January 1, 2024, through December 31, 2024

FOR FURTHER INFORMATION CONTACT: Anita Brown, Program Specialist, (202) 707-7658, crb@loc.gov.

SUPPLEMENTARY INFORMATION: Section 115 of the Copyright Act, title 17 of the United States Code, creates a statutory license for making and distributing phonorecords of nondramatic musical works. On December 16, 2022, the Copyright Royalty Judges (Judges) adopted final regulations that set rates and terms applicable for the statutory license for making and distributing phonorecords of nondramatic musical works. *See* 87 FR 76942.

Pursuant to those regulations, at least 25 days before January 1 of each year, the Judges shall publish in the Federal Register notice of a cost of living adjustment (COLA) applicable to the royalty fees for making and distributing physical phonorecords and Permanent Downloads. 37 CFR 385.11.

The royalty fee shall be adjusted to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) published by the Secretary of Labor before December 1 of the preceding year. The calculation of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November, 2022 (the Base Rate) and shall be made according to the following formulas: for the per-work rate, $(1 + (C_y - \text{Base Rate}) / \text{Base Rate}) \times 12\text{¢}$, rounded to the nearest tenth of a cent; for the per-minute rate, $(1 + (C_y - \text{Base Rate}) / \text{Base Rate}) \times 2.31\text{¢}$, rounded to the nearest hundredth of a cent; where C_y is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. 37 CFR 385.11(a)(2).

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Final Regulations

In consideration of the foregoing, the Judges amend part 385 of title 37 of the Code of Federal Regulations as follows:

PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

2. Section 385.11 is amended by revising paragraph (a)(1) to read as follows:

§ 385.11 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) * * *

(1) *2024 rate*. For the year 2024 for every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord or Permanent Download shall be either 12.40 cents or 2.39 cents per minute of playing time or fraction thereof, whichever amount is larger.

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Dated: December 7, 2023.

David P. Shaw,
Chief Copyright Royalty Judge.

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