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### Copyright Royalty Board

#### 37 CFR Part 385

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

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

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

**ACTION:** Correcting amendments; cost of living adjustment.

**SUMMARY:** On December 12, 2023, the Copyright Royalty Judges amended regulations governing royalty rates for making and distributing physical phonorecords and Permanent Downloads of nondramatic musical works pursuant to statutory license. That document inadvertently omitted figures related to calculation of the adjusted rates and listed an incorrect per-minute rate.

**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](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** This document provides an amplification of the information in the **SUPPLEMENTARY INFORMATION** section and a correction to a rate in the Final Regulations in the final rule / cost of living adjustment document published in the *Federal Register* on December 12, 2023 (88 FR 86058).

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 governing the rates and terms of copyright royalty payments under that license for the license period 2024-2027 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. *See* 37 CFR 385.11.

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) published in November 2022 (298.012)<sup>1</sup> (“base rate”) according to the formulas: for the per-work rate,  $(1 + (C_y - 298.012^2) / 298.012) \times 12\text{¢}$ , rounded to the nearest tenth of a cent; for the per-minute rate,  $(1 + (C_y - 298.012) / 298.012) \times 2.31\text{¢}$ , 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). The CPI-U published by the Secretary of Labor from the most recent index published before December 1, 2023, is 307.671.<sup>3</sup> Applying the formulas in 37 CFR 385.11(a)(2) results in an increase in the rates for 2024.

The adjusted rates for 2024 are 12.4 cents for the per-work rate and 2.38 cents for the per-minute rate.

Details of the required calculations were inadvertently omitted from the document published in the *Federal Register* on December 12, 2023 (88 FR 86058). This document provides, in the **SUPPLEMENTARY INFORMATION** section herein, additional

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<sup>1</sup> The CPI-U published in November 2022 is available at [https://www.bls.gov/news.release/archives/cpi\\_11102022.htm](https://www.bls.gov/news.release/archives/cpi_11102022.htm) at Table 1.

<sup>2</sup> Base rate.

<sup>3</sup> The CPI-U announced on November 14, 2023, by the Bureau of Labor Statistics in its *Consumer Price Index News Release – Consumer Price Index*, is available at [https://www.bls.gov/news.release/archives/cpi\\_11142023.htm](https://www.bls.gov/news.release/archives/cpi_11142023.htm) at Table 1.

details of and results of the calculations, and corrects the amount for the per-minute rate in the Final Regulations herein.

**List of Subjects in 37 CFR Part 385**

Copyright, Phonorecords, Recordings.

**Final Regulations**

In consideration of the foregoing, the Judges correct part 385 of title 37 of the Code of Federal Regulations by making the following correcting amendment:

**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 rates.**

(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 12.4 cents or 2.38 cents per minute of playing time or fraction thereof, whichever amount is larger.

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Dated: December 15, 2023.

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David P. Shaw,  
Chief Copyright Royalty Judge.

