



## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 385

[Docket No. 21-CRB-0001-PR (2023-2027)]

### Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV); Corrections

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

**ACTION:** Correcting amendment.

**SUMMARY:** On December 30, 2022, the Copyright Royalty Judges revised regulations. This document corrects the final regulations to add capitalization to certain defined terms and to correct a term regarding late fees.

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

*Applicability Date:* These terms are applicable during the period from January 1, 2023, through December 31, 2027.

**ADDRESSES:** For access to the docket to read submitted background documents go to eCRB at <https://app.crb.gov/> and search for docket number 21-CRB-0001-PR (2023-2027).

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

**SUPPLEMENTARY INFORMATION:** This document corrects terms in the Final Regulations section of the final rule and order document published in the *Federal Register* on December 30, 2022 (87 FR 80448).

On January 10, 2023, Spotify USA Inc., Amazon.com Services LLC, Google LLC, Pandora Media, LLC, and Apple Inc. (collectively, the “Movants”) filed a motion

requesting that the Copyright Royalty Judges (Judges) issue amendments to their Determination of Royalty Rates and Terms for Making and Distributing Phonorecords, 87 FR 80448 (Dec. 30, 2022) (*Phonorecords IV* Determination). Motion to Request Issuance of Amendment to Determination . . . (Motion). The relevant regulations for which amendments are sought are the result of a settlement in the *Phonorecords IV* proceeding. The Movants noted that National Music Publishers' Association, Inc., and the Nashville Songwriters Association International, who were participants in the *Phonorecords IV* proceeding, consent to the requested relief. Motion at 1. No participant in the *Phonorecords IV* proceeding opposed the Motion.

The Movants stated that 37 CFR 385.3 currently provides that late fees should accrue from the date payment is due until payment is received by the Copyright Owner. However, the Movants stated that the language thus does not acknowledge that the Mechanical Licensing Collective has responsibility for collecting payment under the blanket license for digital uses (though payment remains owed to Copyright Owners for non-blanket license uses). The Movants therefore proposed amendments to 37 CFR 385.3 (reflected below) that would clarify that, where payment is due to the Mechanical Licensing Collective under 17 U.S.C. 115(d)(4)(A)(i), late fees shall accrue from the due date until the Mechanical Licensing Collective receives payment. *Id.* at 1-2.

The Movants also requested that certain capitalization be employed where three defined terms are used in 37 CFR 385.2(d). *Id.* at 2.

The Movants asserted that the amendments are proper because they correct technical errors or modify terms (not rates) of royalty payments that might otherwise frustrate the proper implementation of the *Phonorecords IV* Determination. *Id.* at 1, citing 17 U.S.C. 803(c)(4).

Section 803(c)(4) of the Copyright Act authorizes the Judges to issue amendments to a written determination to correct any technical or clerical errors in the determination

or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. The Judges find good cause to adopt the modified language and find that the requested amendments are sufficiently technical in nature and therefore adopt the amendments pursuant to the Judges' authority under section 803(c)(4) of the Copyright Act.

With regard to the requested amendments to 37 CFR 385.3, the Judges separately find that the requested modifications to the terms but not the rates of royalty payments are in response to unforeseen circumstances that would frustrate the proper implementation of the *Phonorecords IV* Determination. The passage of the Music Modernization Act and the resulting establishment of the Mechanical Licensing Collective is a relatively recent development. The Judges find that these developments, although in existence at the time of the *Phonorecords IV* Determination, were unforeseen by the Settling Parties as they arrived upon and submitted the settlement in *Phonorecords IV*.<sup>1</sup> Furthermore, the Judges find that the amendments fulfill the intention of the *Phonorecords IV* Determination to fully recognize the role of the Mechanical Licensing Collective, and of the Settling Parties, to apply late fees where payment is due to the Mechanical Licensing Collective.

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

Copyright, Phonorecords, Recordings.

Accordingly, 37 CFR part 385 is corrected by making the following correcting amendments:

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<sup>1</sup> The Settling Parties who arrived upon the relevant portions of the regulations are comprised of the Movants on the one hand, and the National Music Publishers' Association, Inc., and the Nashville Songwriters Association International on the other hand, who consent to the requested relief. See 87 FR 80448 n.2.

**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. Revise § 385.3 to read as follows:

**§ 385.3 Late payments.**

A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment owed to a Copyright Owner and remaining unpaid after the due date established in 17 U.S.C. 115(c)(2)(I) or 17 U.S.C. 115(d)(4)(A)(i), as applicable and detailed in part 210 of this title. Late fees shall accrue from the due date until the Copyright Owner receives payment, except that where payment is due to the mechanical licensing collective under 17 U.S.C. 115(d)(4)(A)(i), late fees shall accrue from the due date until the mechanical licensing collective receives payment.

3. In § 385.21, revise the headings of paragraphs (d)(1) through (d)(3) to read as follows:

**§ 385.21 Royalty rates and calculations.**

\* \* \* \* \*

(d) \* \* \*

(1) *Standalone Non-Portable Subscription Offerings—Streaming Only.* \* \* \*

(2) *Standalone Non-Portable Subscription Offerings—Mixed.* \* \* \*

(3) *Standalone Portable Subscription Offerings.* \* \* \*

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Dated: February 6, 2024.

David P. Shaw,  
*Chief Copyright Royalty Judge.*

David R. Strickler,  
*Copyright Royalty Judge.*

Steve Ruwe,  
*Copyright Royalty Judge.*

Approved by:

Carla D. Hayden,  
*Librarian of Congress.*

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