



## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 380

[Docket No 23-CRB-0012-WR (2026 – 2030)]

### Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate Those Performances (Web VI)

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Proposed rule related to public broadcasters (radio).

**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performance of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2026, and ending on December 31, 2030.

**DATES:** Comments and objections, if any, are due [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments using eCRB, the Copyright Royalty Board's online electronic filing application, at <https://app.crb.gov/>.

*Instructions:* To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at [https://app.crb.gov](https://app.crb.gov/), including any personal information provided.

*Docket:* For access to the docket to read submitted background documents or comments, 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-0012-WR (2026 – 2030).

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 114 of the Copyright Act, title 17 of the United States Code, provides a statutory license that allows for the public performance of sound recordings by means of a digital audio transmission by, among others, eligible nonsubscription transmission services. 17 U.S.C. 114(f). For purposes of the section 114 license, an “eligible nonsubscription transmission” is a noninteractive digital audio transmission that does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or other entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

Services using the section 114 license may need to make one or more temporary or “ephemeral” copies of a sound recording to facilitate the transmission of that recording. The section 112 statutory license allows for the making of these ephemeral reproductions. 17 U.S.C. 112(e).

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (“Judges”) to conduct proceedings every five years to determine the rates and terms for the sections 114 and 112 statutory licenses. 17 U.S.C. 801(b)(1), 804(b)(3)(A). The current proceeding commenced in January 2024 for rates and terms that will become effective on

January 1, 2026, and end on December 31, 2030. Pursuant to section 804(b)(3)(A), the Judges published in the *Federal Register* a notice commencing the proceeding and requesting that interested parties submit their petitions to participate. 89 FR 812 (Jan. 5, 2024). SoundExchange, Inc. (“SoundExchange”), National Public Radio, Inc. (“NPR”), and the Corporation for Public Broadcasting (“CPB”)<sup>1</sup> each filed Petitions to Participate, as did others.

On April 18, 2025, the Judges received a joint motion stating that SoundExchange, NPR, and CPB (“Settling Parties”) had reached a partial settlement regarding rates and terms for certain internet transmissions and related ephemeral recordings made by NPR, American Public Media, Public Radio International, Public Radio Exchange, and certain public radio stations (“Public Broadcasters”) for 2026-2030 and seeking approval of that partial settlement. Joint Motion to Adopt Partial Settlement, Docket No. 23-CRB-0012-WR (2026 – 2030).

On April 25, 2025, the Judges issued Order 46 To File Certification or Provide Settlement Agreements, Docket No. 23-CRB-0012-WR (2026 – 2030), which instructed the Settling Parties to certify that the Motion and the Proposed Regulations annexed to the Motion represent the full agreement of the Settling Parties, *i.e.*, that there are no other related agreements and no other clauses. Order 46 further ordered that if such other agreements or clauses exist, the Settling Parties shall file them. Order 46 at 2.

On April 30, 2025, the Settling Parties filed a Joint Response stating that “[t]he Proposed Regulations constituted the Settling Parties’ complete agreement concerning statutory rates and terms. *See* 17 U.S.C. 801(b)(7)(A). However, as is customary in any litigation settlement, the Settling Parties also agreed on procedures for filing and announcing their settlement, which were set forth in a Public Broadcaster Settlement Agreement entered into between SoundExchange and NPR/CPB as of April 16, 2025

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<sup>1</sup> NPR and CPB are participating on behalf of themselves, NPR’s member and affiliated stations, and all public radio stations and entities eligible to receive funding from CPB. Public Broadcasting Entities Petition to Participate at 1 (Feb. 5, 2024).

(“Settlement Agreement”).” Joint Response of SoundExchange Inc., National Public Radio, Inc., and the Corporation for Public Broadcasting to Order 46. Docket No. 23-CRB-0012-WR (2026-2030) (“Joint Response”). Each of the Settling Parties certified that “the only other agreement between the Parties related to the Settlement is the Settlement Agreement.” Joint Response at 2. The Settlement Agreement is attached to the Joint Response as Exhibit D and “includes, at Paragraph 20, a merger clause, reflecting that the entirety of the Settling Parties’ agreement is encompassed in the Settlement Agreement.” Joint Response at 2.

Based upon the Judges’ review of the Joint Response, its attachments, and the related submissions referenced therein, the Judges find no reason to doubt that Exhibit D to the Joint Response constitutes “the agreement” for purposes of Section 801(b)(7)(A). Exhibit D may be found on pages 15-43 of the Joint Response (eCRB no. 57679). The Judges hereby publish the Proposed Regulations and request comments from the public.<sup>2</sup>

### **Statutory Timing of Adoption of Rates and Terms**

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided they are submitted to the Judges for approval. The Judges must provide “an opportunity to comment on the agreement” to participants and non-participants in the rate proceeding who “would be bound by the terms, rates, or other determination set by any agreement....” 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also “object to [the agreement’s] adoption as a basis for statutory terms and rates.” *Id.*

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<sup>2</sup> The docket for this proceeding, including documents referenced in this document, may be accessed via the Electronic filing system eCRB at <https://app.crb.gov> and perform a case search for docket 23-CRB-0012-WR (2026-2030).

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” 17 U.S.C. 801(b)(7)(A)(ii), or where the negotiated agreement includes provisions that are contrary to the provisions of the applicable license(s) or otherwise contrary to statutory law. *See* Scope of the Copyright Royalty Judges Authority to Adopt Confidentiality Requirements upon Copyright Owners within a Voluntarily Negotiated License Agreement, 78 FR 47421, 47422 (Aug. 5, 2013), citing 74 FR 4537, 4540 (Jan. 26, 2009).

Any rates and terms adopted pursuant to this provision would be binding on all copyright owners of sound recordings and public broadcasters performing the sound recordings for the license period 2026-2030.

### **Proposed Adjustments to Rates and Terms**

The Settlement continues the structure of previous settlements between the parties, while increasing the payment to be made by CPB. Joint Motion at 3. Because the Settlement applies only to a closed group of licensees, and has only a single payor (CPB), the Settlement is being submitted to the Judges for adoption as a statutory rate and terms only so that it will be binding on all artists and copyright owners, including those that are not members of SoundExchange. Joint Motion at 3. The parties have agreed to continue their prior reporting arrangements but have not included the details of those arrangements in the Settlement, which, they believe, is consistent with guidance that the Judges have provided. Joint Motion at 3-4. The parties have styled their proposed regulations as a replacement subpart D to appear in the Judges’ regulations at 37 CFR part 380 and have set forth in proposed new subpart D only regulatory provisions specific to Public Broadcasters, on the assumption that the generally applicable provisions in subpart A will

apply to Public Broadcasters to the extent consistent with subpart D. Joint Motion at 7, Exhibit A.

Those who would be bound by the terms, rates, or other determination set by the agreement may comment on, and any participants in the *Web VI* proceeding that would be bound by the terms, rates, or other determination set by the agreement may object to, any or all of the proposed regulations contained in this document. Such comments and objections must be submitted no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

### **List of Subjects in 37 CFR Part 380**

Copyright, Sound recordings, Webcasters.

### **Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Board proposes to amend 37 CFR part 380 as follows:

### **PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS**

1. The authority citation for part 380 continues to read as follows:

**Authority:** 17 U.S.C. 112(e), 114(f), 804(b)(3).

2. Revise subpart D to read as follows:

#### **Subpart D—Public Broadcasters**

Sec.

380.30 Definitions.

380.31 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

380.32 Terms for making payment of royalty fees and statements of account.

#### **§ 380.30 Definitions.**

For purposes of this subpart, the following definitions apply:

*Authorized Website* is any Website operated by or on behalf of any Public Broadcaster that is accessed by Website Users through a Uniform Resource Locator (“URL”) owned by such Public Broadcaster and through which Website Performances are made by such Public Broadcaster.

*CPB* is the Corporation for Public Broadcasting.

*Music ATH* is Aggregate Tuning Hours of Website Performances of sound recordings of musical works.

*NPR* is National Public Radio, Inc.

*Originating Public Radio Station* is a noncommercial terrestrial radio broadcast station that—

(1) Is licensed as such by the Federal Communications Commission;

(2) Originates programming and is not solely a repeater station;

(3) Is a member or affiliate of NPR, American Public Media, Public Radio International, or Public Radio Exchange, a member of the National Federation of Community Broadcasters, or another public radio station that is qualified to receive funding from CPB pursuant to its criteria;

(4) Qualifies as a “noncommercial webcaster” under 17 U.S.C. 114(f)(4)(E)(i);

and

(5) Either—

(i) Offers Website Performances only as part of the mission that entitles it to be exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501); or

(ii) In the case of a governmental entity (including a Native American Tribal governmental entity), is operated exclusively for public purposes.

*Person* is a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, any governmental authority or any other entity or organization.

*Public Broadcasters* are NPR, American Public Media, Public Radio International, and Public Radio Exchange, and up to 530 Originating Public Radio Stations as named by CPB. CPB shall notify SoundExchange annually of the eligible Originating Public Radio Stations to be considered Public Broadcasters per this definition (subject to the numerical limitations set forth in this definition). The number of Originating Public Radio Stations treated per this definition as Public Broadcasters shall not exceed 530 for a given year without SoundExchange's express written approval, except that CPB shall have the option to increase the number of Originating Public Radio Stations that may be considered Public Broadcasters as provided in § 380.31(d).

*Side Channel* is any internet-only program available on an Authorized Website or an archived program on such Authorized Website that, in either case, conforms to all applicable requirements under 17 U.S.C. 114.

*Term* is the period January 1, 2026, through December 31, 2030.

*Website* is a site located on the World Wide Web that can be located by a Website User through a principal URL.

*Website Performances* are all public performances by means of digital audio transmissions of sound recordings, including the transmission of any portion of any sound recording, made through an Authorized Website in accordance with all requirements of 17 U.S.C. 114, from servers used by a Public Broadcaster (provided that the Public Broadcaster controls the content of all materials transmitted by the server), or by a contractor authorized pursuant to § 380.31(g), that consist of either the retransmission of a Public Broadcaster's over-the-air terrestrial radio programming or the digital transmission of nonsubscription Side Channels that are programmed and controlled by

the Public Broadcaster; provided, however, that a Public Broadcaster may limit access to an Authorized Website, or a portion thereof, or any content made available thereon or functionality thereof, solely to Website Users who are contributing members of a Public Broadcaster. This term does not include digital audio transmissions made by any other means.

*Website Users* are all those who access or receive Website Performances or who access any Authorized Website.

**§ 380.31 Royalty fees for the public performance of sound recordings and for ephemeral recordings.**

(a) *Royalty fees.* The total license fee for all Website Performances by Public Broadcasters during each year of the Term, up to the total Music ATH limit set forth in paragraph (b) of this section, and Ephemeral Recordings made by Public Broadcasters solely to facilitate such Website Performances, shall be as follows (the “License Fee”), unless additional payments are required as described in paragraph (d) of this section:

- (1) 2026: \$950,000;
- (2) 2027: \$975,000;
- (3) 2028: \$1,000,000;
- (4) 2029: \$1,025,000; and
- (5) 2030: \$1,050,000.

(b) *ATH limit.* The total Music ATH limit is 310,000,000 Music ATH per year.

(c) *Calculation of License Fee.* It is understood that the License Fee includes:

- (1) An annual minimum fee for each Public Broadcaster for each year during the Term;
- (2) Additional usage fees for certain Public Broadcasters; and

(3) A discount that reflects the administrative convenience to the Collective (for purposes of this subpart, the term “Collective” refers to SoundExchange, Inc.) of receiving consolidated reporting of usage in accordance with § 380.32(b) that covers a large number of separate entities and annual lump sum payments that cover a large number of separate entities, as well as the predictability, time value of money and protection from bad debt that arises from being paid in advance.

(d) *Increase in Public Broadcasters.* If the total number of Originating Public Radio Stations that wish to make Website Performances in any calendar year exceeds the number of such Originating Public Radio Stations considered Public Broadcasters in the relevant year, and the excess Originating Public Radio Stations do not wish to pay royalties for such Website Performances apart from this subpart, CPB may elect by written notice to the Collective to increase the number of Originating Public Radio Stations considered Public Broadcasters in the relevant year effective as of the date of the notice. To the extent of any such elections, CPB shall make an additional payment to the Collective for each calendar year or part thereof it elects to have an additional Originating Public Radio Station considered a Public Broadcaster, in the amount of the annual minimum fee applicable to Noncommercial Webcasters under subpart B of this part for each additional Originating Public Radio Station per year. Such payment shall accompany the notice electing to have an additional Originating Public Radio Station considered a Public Broadcaster.

(e) *Ephemeral Recordings royalty fees; allocation between Ephemeral Recordings and performance royalty fees.* The Collective must credit 5% of all royalty payments under this subpart as payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions are included in the 5%.

(f) *Effect of non-performance by any Public Broadcaster.* In the event that any Public Broadcaster violates any of the material provisions of 17 U.S.C. 112(e) or 114 or this subpart that it is required to perform, the remedies of the Collective shall be specific to that Public Broadcaster only, and shall include, without limitation, termination of that Public Broadcaster's right to be treated as a Public Broadcaster per this paragraph (f) upon written notice to CPB. The Collective and Copyright Owners also shall have whatever rights may be available to them against that Public Broadcaster under applicable law. The Collective's remedies for such a breach or failure by an individual Public Broadcaster shall not include termination of the rights of other Public Broadcasters to be treated as Public Broadcasters per this paragraph (f), except that if CPB fails to pay the License Fee or otherwise fails to perform any of the material provisions of this subpart, or such a breach or failure by a Public Broadcaster results from CPB's inducement, and CPB does not cure such breach or failure within 30 days after receiving notice thereof from the Collective, then the Collective may terminate the right of all Public Broadcasters to be treated as Public Broadcasters per this paragraph (f) upon written notice to CPB. In such a case, a prorated portion of the License Fee for the remainder of the Term (to the extent paid by CPB) shall, after deduction of any damages payable to the Collective by virtue of the breach or failure, be credited to statutory royalty obligations of Public Broadcasters to the Collective for the Term as specified by CPB.

(g) *Use of contractors.* The right to rely on this subpart is limited to Public Broadcasters, except that a Public Broadcaster may employ the services of a third Person to provide the technical services and equipment necessary to deliver Website Performances on behalf of such Public Broadcaster, but only through an Authorized Website. Any agreement between a Public Broadcaster and any third Person for such services shall:

(1) Obligate such third Person to provide all such services in accordance with all applicable provisions of the statutory licenses and this subpart;

(2) Specify that such third Person shall have no right to make Website Performances or any other performances or Ephemeral Recordings on its own behalf or on behalf of any Person or entity other than a Public Broadcaster through the Public Broadcaster's Authorized Website by virtue of its services for the Public Broadcaster, including in the case of Ephemeral Recordings, pre-encoding or otherwise establishing a library of sound recordings that it offers to a Public Broadcaster or others for purposes of making performances, but instead must obtain all necessary licenses from the Collective, the copyright owner or another duly authorized Person, as the case may be;

(3) Specify that such third Person shall have no right to grant any sublicenses under the statutory licenses; and

(4) Provide that the Collective is an intended third-party beneficiary of all such obligations with the right to enforce a breach thereof against such third Person.

**§ 380.32 Terms for making payment of royalty fees and statements of account.**

(a) *Payment to the Collective.* Except as provided in paragraphs (a)(1) through (3) of this section, CPB shall pay the License Fee to the Collective in the annual installments specified in § 380.31(a), which shall be due in advance on December 31, 2025, and annually thereafter through December 31, 2029.

(1) *CPB inability to pay.* If, due to a significant decrease in U.S. government funding for CPB as compared to years prior to the Term, CPB reasonably concludes that it is impossible for CPB to pay the License Fee for a particular year during the Term, CPB may by written notice to the Collective prior to December 1 of the preceding year nominate NPR or a third party to pay the License Fee for such year. In such a case, if by December 15 of the preceding year, NPR or such third party agrees by written notice to

the Collective to assume CPB's obligation to pay the License Fee for such year, NPR or such third party shall do so by December 31 of the preceding year.

(2) *Dissolution of CPB.* If CPB ceases to exist, and if NPR or any successor to CPB's mission or other third party agrees by written notice to the Collective to assume CPB's obligation to pay the License Fee for the remaining years of the Term, NPR or such successor shall do so by December 31 preceding each remaining year of the Term. In such a case, NPR or such successor or other third party shall exercise all the rights of CPB under this subpart (e.g., identifying the eligible Originating Public Radio Stations to be considered Public Broadcasters), and must exercise all the responsibilities of CPB under this subpart (e.g., providing reporting in accordance with paragraph (b) of this section).

(3) *Consequence of nonpayment.* If the Collective does not receive the License Fee for any year of the Term by December 31 of the preceding year, then the provisions of this subpart shall be unavailable to Public Broadcasters for such year, and any Public Broadcaster making Website Performances and related Ephemeral Recordings during such year must pay applicable royalty fees, and comply with applicable statutory license terms, under subparts A and B of this part, except that if the Copyright Royalty Judges have adopted pursuant to 17 U.S.C. 801(b)(7)(A) a lower per-Performance rate for Nonsubscription transmissions by some other group of Licensees during such year, such lower per-Performance rate will apply to Website Performances by Public Broadcasters during such year in any situation in which a per-Performance royalty is payable under subparts A and B of this part.

(b) *Reporting.* CPB and Public Broadcasters shall submit reports of use and other information concerning Website Performances as agreed upon with the Collective.

(c) *Terms in general.* Subject to the provisions of this subpart, terms governing late fees, distribution of royalties by the Collective, unclaimed funds, record retention

requirements, treatment of Licensees' confidential information, audit of royalty payments and distributions, and any definitions for applicable terms not defined in this subpart shall be those set forth in subpart A of this part.

**Dated:** May 12, 2025.

**Christina L. Shifton,**

*Interim Chief Copyright Royalty Judge.*

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