



## 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 commercial webcasters.

**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the nonsubscription digital performance of sound recordings by commercial broadcasters 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”), and National Association of Broadcasters (“NAB”) each filed Petitions to Participate, as did others.

On April 9, 2025, the Judges received a joint motion from SoundExchange and NAB to adopt a partial settlement of their interests regarding *Web VI* rates and terms 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 14, 2025, the Judges issued “Order 36 To File Certification or Provide Settlement Agreement,” 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 36 further ordered that if such other agreements or clauses exist, the Settling Parties shall file them.

On April 18, 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 Commercial Broadcaster Settlement Agreement entered into between SoundExchange and NAB as of April 4, 2025 (“Settlement Agreement”).” Joint Response of SoundExchange Joint Petitioners and the National Association of Broadcasters to Order 36. Docket No. 23-CRB-0012-WR (2026-2030) (“Joint Response”). 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 C and “includes, at Paragraph 10, 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 C to the Joint Response constitutes “the agreement” for purposes of Section 801(b)(7)(A). Exhibit C may be found on pages 11-31 of the Joint Response (eCRB no. 57276). The Judges hereby publish the Proposed Regulations and request comments from the public.<sup>1</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.*

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

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<sup>1</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).

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 commercial broadcasters performing the sound recordings for the license period 2026-2030.

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

According to SoundExchange and NAB, the settlement includes agreed-upon performance royalties for nonsubscription digital audio transmissions by Commercial Broadcasters (and ephemeral recordings to facilitate such transmissions), as well as agreed-upon increases in the annual minimum fee over the rate period. The proposed regulations also include certain agreed-upon changes to existing statutory license terms, including shortening the monthly payment cycle from 45 days to 30 days, reducing the late fee applicable to late payments discovered in an audit during the period from which a notice of intent is filed through the date that the auditor provides its written report from 1.5% per month to 1% per month, capping late fees on underpayments discovered during an audit at 75% of the total amount the auditor determines is owed pursuant to the audit, providing SoundExchange permission to distribute royalties based on proxy data when it cannot obtain a report of use from a Commercial Broadcaster, and effective January 1, 2027, requiring Commercial Broadcasters using third-party vendors for transmissions or reporting to either obtain data necessary for verifying their royalty payments from their vendors on an ongoing basis or contractually require delivery of necessary data in the event of an audit (in each instance of the foregoing, as set forth in more detail in the attached Settlement). Other terms of the applicable Section 112(e) and 114 statutory

licenses are agreed to continue in all material respects in accordance with the same terms as are in effect on the date of the Motion (April 9, 2025). Joint Motion at 2-3.

Those who would be bound by the terms, rates, or other determination set by the agreement may comment on, and proceeding participants 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. Add subpart E to read as follows:

#### **Subpart E—Nonsubscription Transmissions by Commercial Broadcasters**

Sec.

380.40 Definitions.

380.41 Royalty fees for the public performance of sound recordings by Commercial Broadcasters making Nonsubscription Transmissions and for Ephemeral Recordings.

380.42 Making payment of royalty fees.

380.43 Delivering statements of account.

380.44 Distributing royalty fees.

380.45 Handling Confidential Information.

380.46 Auditing payments and distributions.

## **§ 380.40 Definitions.**

In addition to the definitions in § 380.7, the following definitions apply for purposes of this subpart:

*Collective* means the collection and distribution organization that is designated by the Copyright Royalty Judges, which, for the current rate period, is SoundExchange, Inc.

*Commercial Broadcaster* is a Commercial Webcaster, a material part of the business of which consists of owning and operating one or more terrestrial AM or FM broadcast radio stations licensed as such by the Federal Communications Commission.

*Commercial Webcaster* means a Licensee, other than a Noncommercial Webcaster, Noncommercial Educational Webcaster, or Public Broadcaster, that makes Ephemeral Recordings and eligible Digital Audio Transmissions of sound recordings pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(d)(2).

*Copyright Owners* means sound recording copyright owners, and rights owners under 17

U.S.C. 1401(1)(2), who are entitled to royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

*Digital Audio Transmission* has the same meaning as in 17 U.S.C. 114(j)(5).

*Eligible Transmission* means a Nonsubscription Transmission made by a Licensee that is subject to licensing under 17 U.S.C. 114(d)(2) and the payment of royalties under this part.

*Ephemeral Recording* has the same meaning as in 17 U.S.C. 112.

*Licensee* means a Commercial Webcaster, a Noncommercial Webcaster, a Noncommercial Educational Webcaster, a Public Broadcaster, or any entity operating a noninteractive internet streaming service that has obtained a license under 17 U.S.C. 114 to make Eligible Transmissions and a license under 17 U.S.C. 112(e) to make Ephemeral Recordings to facilitate those Eligible Transmissions.

*Noncommercial Educational Webcaster* means a Noncommercial Educational Webcaster under subpart C of this part.

*Noncommercial Webcaster* has the same meaning as in 17 U.S.C. 114(f)(4)(E), but excludes a Noncommercial Educational Webcaster or Public Broadcaster.

*Nonsubscription* has the same meaning as in 17 U.S.C. 114(j)(9).

*Payor* means the entity required to make royalty payments to the Collective or the entity required to distribute royalty fees collected, depending on context. The Payor is:

- (1) A Licensee, in relation to the Collective; and
- (2) The Collective in relation to a Copyright Owner or Performer.

*Performance* means each instance in which any portion of a sound recording is publicly performed to a listener by means of a Digital Audio Transmission (e.g., the delivery of any portion of a single track from a compact disc or server copy to one listener), but excludes the following:

- (1) A performance of a sound recording that does not require a license (e.g., a sound recording that is not subject to protection under title 17, United States Code);
- (2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and
- (3) An incidental performance that both:
  - (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and
  - (ii) Does not contain an entire sound recording, other than ambient music that is background at a public event, and does not feature a particular sound recording of more

than thirty seconds (as in the case of a sound recording used as a theme song).

*Performers* means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

*Public Broadcaster* means a Public Broadcaster under subpart D of this part.

*Qualified Auditor* means an independent Certified Public Accountant.

*Transmission* has the same meaning as in 17 U.S.C. 114(j)(15).

**§ 380.41 Royalty fees for the public performance of sound recordings by Commercial Broadcasters making Nonsubscription Transmissions and for Ephemeral Recordings.**

(a) *Royalty fees.* During the period 2026-2030, royalty rates for Commercial Broadcasters making Nonsubscription Digital Audio Transmissions of sound recordings pursuant to 17 U.S.C. 114, and for Ephemeral Recordings of sound recordings made pursuant to 17 U.S.C. 112(e) to facilitate such transmissions, are as follows:

- (1) 2026: \$0.0028 per Performance;
- (2) 2027: \$0.0029 per Performance;
- (3) 2028: \$0.0030 per Performance;
- (4) 2029: \$0.0031 per Performance; and
- (5) 2030: \$0.0032 per Performance.

(b) *Minimum fee.* (1) Subject to paragraph (b)(2) of this section, Commercial Broadcasters making Nonsubscription Digital Audio Transmissions of sound recordings pursuant to 17 U.S.C. 114 must pay the Collective a minimum fee as follows each year for each channel or station:

- (i) 2026: \$1,100;
- (ii) 2027: \$1,150;
- (iii) 2028: \$1,200;
- (iv) 2029: \$1,250; and

(v) (2030: \$1,250.

(2) The Collective must apply the fee to the Commercial Broadcaster's account as credit towards any additional royalty fees that the Commercial Broadcaster may incur under this subpart in the same year. The fee is payable for each individual channel and each individual station maintained or operated by the Commercial Broadcaster and making Nonsubscription Digital Audio Transmissions of sound recordings pursuant to 17 U.S.C. 114 during each calendar year or part of a calendar year during which it is a Licensee. The maximum aggregate minimum fee that a Commercial Broadcaster making Nonsubscription Digital Audio Transmissions of sound recordings pursuant to 17 U.S.C.114 must pay under this subpart in any calendar year is 100 multiplied by the applicable amount specified in paragraph (b)(1) of this section. The minimum fee is nonrefundable.

*(c) 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 Commercial Broadcaster makes which are necessary and commercially reasonable for making noninteractive Nonsubscription Digital Audio Transmissions are included in the 5%.

**§ 380.42 Making payment of royalty fees.**

*(a) Payment to the Collective.* A Commercial Broadcaster must make the royalty payments due under this subpart to SoundExchange, Inc., which is the Collective designated by the Copyright Royalty Board to collect and distribute royalties under this subpart.

*(b) Monthly payments.* A Commercial Broadcaster must make royalty payments on a monthly basis. Payments, Statements of Account and Reports of Use are due on or before the 30th day after the end of the month in which the Commercial Broadcaster

made Nonsubscription Digital Audio Transmissions of sound recordings pursuant to 17 U.S.C. 114.

(c) *Minimum payments.* A Commercial Broadcaster must make any minimum annual payments due under this subpart by January 31 of the applicable license year. A Commercial Broadcaster that as of January 31 of any year has not made any Nonsubscription Digital Audio Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e), but that begins making such transmissions after that date must make any payment due by the 30th day after the end of the month in which the Commercial Broadcaster commences making such transmissions.

(d) *Late fees.* (1) A Commercial Broadcaster must pay a late fee for each payment and each Statement of Account that the Collective receives after the due date. The late fee is 1.5% (or the highest lawful rate, whichever is lower) of the late payment amount per month, except as specified in paragraph (d)(2) of this section. The late fee for a late Statement of Account is 1.5% of the payment amount associated with the Statement of Account. Late fees accrue from the due date until the date that the Collective receives the late payment or late Statement of Account.

(2) In a case in which, pursuant to § 380.46(g), an auditor determines that a Commercial Broadcaster underpaid royalties pursuant to this subpart:

(i) The late fee applicable to the underpayment so discovered shall accrue at the rate of 1% (or the highest lawful rate, whichever is lower) of the underpayment amount per month during the period starting on the date that the relevant notice of intent to audit is filed with the Copyright Royalty Judges pursuant to § 380.46(c), and ending on the date that the auditor provides its written report pursuant to § 380.46(f);

(ii) The late fee applicable to the underpayment so discovered shall accrue at the rate provided in paragraph (d)(1) of this section at all other times between the due date and the date that the Collective receives the underpayment so discovered; and

(iii) The total amount of late fees applicable to the underpayment so discovered shall in no event exceed 75% of the principal amount of the underpayment so discovered.

(e) *Waiver of late fees.* The Collective may waive or lower late fees for immaterial or inadvertent failures of a Commercial Broadcaster to make a timely payment or submit a timely Statement of Account.

(f) *Notice regarding noncompliant Statements of Account.* If it is reasonably evident to the Collective that a timely-provided Statement of Account is materially noncompliant, the Collective must notify the Commercial Broadcaster within 90 days of discovery of the noncompliance.

(g) *Use of account numbers.* If the Collective notifies a Commercial Broadcaster of an account number to be used to identify its royalty payments for a particular service offering, the Commercial Broadcaster must include that account number on its check or check stub for any payment for that service offering made by check, in the identifying information for any payment for that service offering made by electronic transfer, in its statements of account for that service offering under § 380.43, and in the transmittal of its Reports of Use for that service offering under § 370.4 of this chapter.

### **§ 380.43 Delivering statements of account.**

(a) *Statements of Account.* Any payment due under this part must be accompanied by a corresponding Statement of Account that must contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the Statement of Account;

(3) The account number assigned to the Licensee by the Collective for the relevant

service offering (if the Licensee has been notified of such account number by the Collective);

(4) The signature of:

(i) The Licensee or a duly authorized agent of the Licensee;

(ii) A partner or delegate if the Licensee is a partnership; or

(iii) An officer of the corporation if the Licensee is a corporation.

(5) The printed or typewritten name of the person signing the Statement of Account;

(6) If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the Statement of Account;

(7) A certification of the capacity of the person signing;

(8) The date of signature; and

(9) An attestation to the following effect: I, the undersigned owner/officer/partner/agent of the Licensee have examined this Statement of Account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence and that it fairly presents, in all material respects, the liabilities of the Licensee pursuant to 17 U.S.C. 112(e) and 114 and applicable regulations adopted under those sections.

(b) *Certification.* Licensee's Chief Financial Officer or, if Licensee does not have a Chief Financial Officer, a person authorized to sign Statements of Account for the Licensee, must submit a signed certification on an annual basis attesting that the Licensee's royalty statements for the prior year represent a true and accurate determination of the royalties due and that any method of allocation employed by Licensee was applied in good faith and in accordance with U.S. GAAP.

**§ 380.44 Distributing royalty fees.**

(a) *Distribution of royalties.* (1) The Collective must promptly distribute royalties

received from Commercial Broadcasters to Copyright Owners and Performers that are entitled thereto, or to their designated agents. The Collective shall only be responsible for making distributions to those who provide the Collective with information as is necessary to identify and pay the correct recipient. The Collective must distribute royalties on a basis that values all Performances by a Commercial Broadcaster equally based upon the information provided under the Reports of Use requirements for Commercial Broadcasters pursuant to § 370.4 of this chapter and this subpart. In any case in which a Commercial Broadcaster has not provided a compliant Report of Use, whether for the current license period or otherwise, and the board of directors of the Collective determines that further efforts to seek the missing Report of Use from the Commercial Broadcaster would not be warranted, the Collective may distribute the royalties associated with the Commercial Broadcaster's missing Report of Use on the basis of Reports of Use for the corresponding calendar year filed by other Licensees.

(2) The Collective must use its best efforts to identify and locate Copyright Owners and featured artists in order to distribute royalties payable to them under 17 U.S.C. 112(e) and 114. Such efforts must include, but not be limited to, searches in Copyright Office public records and published directories of sound recording Copyright Owners.

(b) *Unclaimed funds.* If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this part, the Collective must retain the required payment in a segregated trust account for a period of three years from the date of the first distribution of royalties from the relevant payment by a Commercial Broadcaster. No claim to distribution shall be valid after the expiration of the three-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3).

(c) *Retention of records.* Commercial Broadcasters shall keep and securely store

complete and accurate books and records relating to payments of royalties under this subpart for a period of not less than the prior three calendar years, including all supporting documentation necessary to permit verification of the accuracy of their payments pursuant to § 380.46. On and after January 1, 2027, a Commercial Broadcaster using a third-party vendor for transmission of Performances licensed as Nonsubscription Digital Audio Transmissions pursuant to 17 U.S.C. 114 or reporting due pursuant to this subpart must comply with this requirement by either obtaining necessary data from its vendor on an ongoing basis or contractually requiring delivery of necessary data by its vendor in the event of verification pursuant to § 380.46. The Collective shall keep books and records relating to distributions of royalties for a period of not less than the prior three calendar years.

(d) *Designation of the Collective.* (1) The Judges designate SoundExchange, Inc., as the Collective to receive Statements of Account and royalty payments from Commercial Broadcasters and to distribute royalty payments to each Copyright Owner and Performer (or their respective designated agents) entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced for the applicable royalty period by a successor Collective according to the following procedure:

(i) The nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding SoundExchange's cessation or dissolution shall vote by a majority to recommend that the Copyright Royalty Judges designate a successor and must file a petition with the Copyright Royalty Judges requesting that the Judges designate the named successor and setting forth the reasons therefor.

(ii) Within 30 days of receiving the petition, the Copyright Royalty Judges must issue an order designating the recommended Collective, unless the Judges find good cause not to make and publish the designation in the Federal Register.

**§ 380.45 Handling Confidential Information.**

(a) *Definition.* For purposes of this part, “Confidential Information” means the Statements of Account and any information contained therein, including the amount of royalty payments and the number of Performances, and any information pertaining to the Statements of Account reasonably designated as confidential by the party submitting the statement. Confidential Information does not include documents or information that at the time of delivery to the Collective is public knowledge. The party seeking information from the Collective based on a claim that the information sought is a matter of public knowledge shall have the burden of proving to the Collective that the requested information is in the public domain.

(b) *Use of Confidential Information.* The Collective may not use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(c) *Disclosure of Confidential Information.* The Collective shall limit access to Confidential Information to:

(1) Those employees, agents, consultants, and independent contractors of the Collective, subject to an appropriate written confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related directly thereto who require access to the Confidential Information for the purpose of performing their duties during the ordinary course of their work;

(2) A Qualified Auditor or outside counsel who is authorized to act on behalf of:

(i) The Collective with respect to verification of a Licensee’s statement of account pursuant to this part; or

(ii) A Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to this part;

(3) Copyright Owners and Performers, including their designated agents, whose works a Licensee used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, subject to an appropriate written confidentiality agreement, and including those employees, agents, consultants, and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate written confidentiality agreement, who require access to the Confidential Information to perform their duties during the ordinary course of their work;

(4) Attorneys and other authorized agents of parties to proceedings under 17 U.S.C. 112 and 114, acting under an appropriate protective order.

(d) *Safeguarding Confidential Information.* The Collective and any person authorized to receive Confidential Information from the Collective must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.

#### **§ 380.46 Auditing payments and distributions.**

(a) *General.* This section prescribes procedures by which any entity entitled to receive payment or distribution of royalties may verify payments or distributions by auditing the Payor. The Collective may audit a Commercial Broadcaster's payments of royalties to the Collective, and a Copyright Owner or Performer may audit the Collective's distributions of royalties to the Copyright Owner or Performer. Nothing in this section shall preclude a verifying entity and the Payor from agreeing to verification methods in addition to or different from those set forth in this section.

(b) *Frequency of auditing.* The verifying entity may conduct an audit of each Payor only once a year for any or all of the prior three calendar years. A verifying entity may not audit records for any calendar year more than once.

(c) *Notice of intent to audit.* The verifying entity must file with the Copyright Royalty Judges a notice of intent to audit the Payor, which notice the Judges must publish in the Federal Register within 30 days of the filing of the notice. Simultaneously with the filing of the notice, the verifying entity must deliver a copy to the Payor.

(d) *The audit.* The audit must be conducted during regular business hours by a Qualified Auditor who is not retained on a contingency fee basis and is identified in the notice. The auditor shall determine the accuracy of royalty payments or distributions, including whether an underpayment or overpayment of royalties was made. An audit of books and records, including underlying paperwork, performed in the ordinary course of business according to generally accepted auditing standards by a Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(e) *Access to third-party records for audit purposes.* The Payor must use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit.

(f) *Duty of auditor to consult.* The auditor must produce a written report to the verifying entity. Before rendering the report, unless the auditor has a reasonable basis to suspect fraud on the part of the Payor, the disclosure of which would, in the reasonable opinion of the auditor, prejudice any investigation of the suspected fraud, the auditor must review tentative written findings of the audit with the appropriate agent or employee of the Payor in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Payor reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

The auditor must include in the written report information concerning the cooperation or the lack thereof of the employee or agent.

(g) *Audit results; underpayment or overpayment of royalties.* If the auditor determines the Payor underpaid royalties, the Payor shall remit the amount of any underpayment determined by the auditor to the verifying entity, together with interest as specified in § 380.42(d). In the absence of mutually-agreed payment terms, which may, but need not, include installment payments, the Payor shall remit promptly to the verifying entity the entire amount of the underpayment determined by the auditor and the applicable late fees. If the auditor determines the Payor overpaid royalties, however, the verifying entity shall not be required to remit the amount of any overpayment to the Payor, and the Payor shall not seek by any means to recoup, offset, or take a credit for the overpayment, unless the Payor and the verifying entity have agreed otherwise.

(h) *Paying the costs of the audit.* The verifying entity must pay the cost of the verification procedure, unless the auditor determines that there was a net underpayment (*i.e.*, underpayments less any overpayments) of 10% or more, in which case the Payor must bear the reasonable, documented costs of the verification procedure, in addition to paying or distributing the amount of any underpayment.

(i) *Retention of audit report.* The verifying entity must retain the report of the audit for a period of not less than three years from the date of issuance.

**Dated:** May 13, 2025.

**Christina L. Shifton,**  
*Interim Chief Copyright Royalty Judge.*

[FR Doc. 2025-08805 Filed: 5/15/2025 8:45 am; Publication Date: 5/16/2025]