



LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 383

[Docket No. 23-CRB-0013-NSR (2026–2030)]

Determination of Rates and Terms for Digital Performance of Sound Recordings by New Subscription Services and Making of Ephemeral Copies to Facilitate Those Performances (NSS V)

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

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish a final rule governing the rates and terms for the digital performances of sound recordings by new subscription services and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2026, and ending on December 31, 2030.

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

Applicability date: The regulations apply to the license period beginning January 1, 2026, and ending December 31, 2030.

ADDRESSES: Docket: For access to the docket, 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-0013-NSR (2026–2030).

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

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2024, the Copyright Royalty Judges published a proposed rule governing the rates and terms for the digital performances of sound recordings by new

subscription services that provide transmissions to residential subscribers as part of a cable or satellite television bundle and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2026, and ending on December 31, 2030. 89 FR 103722. The rates and terms in the proposed rule were the subject of a settlement between SoundExchange, Inc., Sirius XM Inc., and Stingray Music USA Inc. Settling Parties' Joint Motion to Adopt Settlement, Docket No. 23-CRB-0013-NSR (2026-2030) ("NSS V"). Those who would be bound by the terms, rates, or other determination set by the agreement were given the opportunity to comment and participants in the NSS V proceeding were given the opportunity to object to any or all of the proposed regulations. In response to a comment from the settling parties, the Judges published a correction to the proposed rule on February 10, 2025, to correct the omission of certain parentheses in the rate adjustment formulas. 90 FR 9224. The correction extended the comment period through March 12, 2025.

The Judges received one additional comment to the proposed rule from David Powell. Mr. Powell is not a participant in the NSS V proceeding and thus is not entitled to object to the settlement. To the extent he would be bound by the terms, rates, or other determination set by the agreement, his comment did not contain "any comprehensible basis" for deviating from the settlement. Order 6 Denying Powell Motions, Docket No. 23-CRB-0013-NSR (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 licenses or otherwise contrary to statutory law. No NSS IV participant has objected to the

settlement. The Register of Copyrights has completed her review of the CRB's Final Rule for legal error, under 17 U.S.C. § 803(f)(1)(D), and will not be issuing any corrections. In the absence of any objection from a participant, and in the absence of any cognizable indication that the Final Rule includes provisions that are contrary to the applicable licenses or otherwise contrary to statutory law, the provisions of 17 U.S.C. § 801(b)(7)(A) direct the Judges to adopt the Final Rule.¹ Therefore, the Judges adopt the terms and rates as proposed. The Judges find that under the circumstances of this proceeding and this settlement, adoption of the Final Rule is directed by the statute, and that such directed adoption is principally a ministerial function by the Judges.

List of Subjects in 37 CFR Part 383

Copyright, Sound recordings, Webcasters.

Final regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges revise 37 CFR part 383 to read as follows:

PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE REPRODUCTION OF EMPHEMERAL RECORDINGS BY CERTAIN NEW SUBSCRIPTION SERVICES

Sec.

383.1 General.

383.2 Definitions.

383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

383.4 Distribution of royalties.

383.5 Auditing payments and distributions.

383.6 Terms for making payment of royalty fees.

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 383.1 General.

¹ The provisions of 37 CFR § 383.4 in the Final Rule do not limit the statutory obligations in 17 U.S.C. § 114(g)(5) or (6).

(a) *Scope*. This part establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of certain ephemeral recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period commencing January 1, 2026, and continuing through December 31, 2030.

(b) *Legal compliance*. Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections and the rates and terms of this part.

(c) *Relationship to voluntary agreements*. Notwithstanding the royalty rates and terms established in this part, the rates and terms of any voluntary license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this part to transmissions with the scope of such agreements.

§ 383.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Bundled Contracts* means contracts between the Licensee and a Provider in which the Service is not the only content licensed by the Licensee to the Provider.

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

(c) *Copyright Owner* means a sound recording copyright owner, or a rights owner under 17 U.S.C. 1401(l)(2), who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

(d) *License Period* means the period commencing January 1, 2026, and continuing through December 31, 2030.

(e) *Licensee* is a person that has obtained statutory licenses under 17 U.S.C. 112(e) and 114, and the implementing regulations in this part, to make digital audio

transmissions as part of a Service (as defined in this section), and ephemeral recordings for use in facilitating such transmissions.

(f) *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.

(g) *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).

(h) *Provider* means a “multichannel video programming distributor” as that term is defined in 47 CFR 76.1000(e); notwithstanding such definition, for purposes of this part, a Provider shall include only a distributor of programming to televisions, such as a cable or satellite television provider.

(i) *Qualified auditor* means a Certified Public Accountant independent within the meaning of the American Institute of Certified Public Accountants Code of Professional Conduct.

(j) *Service* is a non-interactive (consistent with the definition of “interactive service” in 17 U.S.C. 114(j)(7)) audio-only subscription service (including accompanying information and graphics related to the audio) that is transmitted to residential subscribers of a television service through a Provider which is marketed as and is in fact primarily a video service where:

(1) Subscribers do not pay a separate fee for audio channels.

(2) The audio channels are delivered by digital audio transmissions through a technology that is incapable of tracking the individual sound recordings received by any particular consumer.

(3) However, paragraph (j)(2) of this section shall not apply to the Licensee's current contracts with Providers that are in effect as of the effective date of this part if such Providers become capable in the future of tracking the individual sound recordings received by any particular consumer, provided that the audio channels continued to be delivered to Subscribers by digital audio transmissions and the Licensee remains incapable of tracking the individual sound recordings received by any particular consumer.

(k) *Subscriber* means every residential subscriber to the underlying service of the Provider who receives Licensee's Service in the United States for all or any part of a month; provided, however, that for any Licensee that is not able to track the number of subscribers on a per-day basis, "Subscribers" shall be calculated based on the average of the number of subscribers on the last day of the preceding month and the last day of the applicable month, unless the Service is paid by the Provider based on end-of-month numbers, in which event "Subscribers" shall be counted based on end-of-month data.

(l) *Stand-Alone Contracts* means contracts between the Licensee and a Provider in which the only content licensed to the Provider is the Service.

§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) *Royalty rates.* Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service 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 during the License Period, are as follows. For 2026, each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, a monthly payment of [amount to be calculated in November 2025 and published in December 2025 in the final rule] per Subscriber to the

Service of such Licensee, which is equivalent to the 2025 royalty rate of \$0.0234, as adjusted by the annual royalty fee adjustment in paragraph (b) of this section.

(2) For Bundled Contracts, a monthly payment of [amount to be calculated in November 2025 and published in December 2025 in the final rule] per Subscriber to the Service of such Licensee, which is equivalent to the 2025 royalty rate of \$0.0390, as adjusted by the annual royalty fee adjustment in paragraph (b) of this section.

(b) *Annual royalty fee adjustment.* (1) The Copyright Royalty Judges shall adjust the royalty fees each year, as described in paragraph (b)(2) of this section, beginning with the fees for 2026, 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.

(2)(i) 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 2024 (CPI-U%) and shall be made according to the following formulas:

(A) For Stand-Alone Contracts, $(1 + (C_y - 315.664) / 315.664) \times \0.0234 ; and

(B) For Bundled Contracts, $(1 + (C_y - 315.664) / 315.664) \times \0.0390 ; and

(ii) For both formulas C_y is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place.

(3) The Judges shall publish notice of the adjusted fees in the *Federal Register* at least 25 days before January 1 of each year of the License Period. The adjusted fees shall be effective on January 1 of each year of the License Period for such year.

(c) *Minimum fee.* Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars (\$100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to statutory licenses under 17 U.S.C. 112(e)

and 114. Such fee shall be recoupable and credited against royalties due in the calendar year for which the payment is made.

(d) *Allocation between ephemeral recordings fees and performance royalty fees.*

The Collective must credit 5% of all royalty payments as royalty payment for Ephemeral Recordings and credit the remaining 95% to royalties under 17 U.S.C. 114. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions through a Service are included in the 5%.

§ 383.4 Distribution of royalties.

The Collective must promptly distribute royalties received from Licensees 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 usage by a Licensee equally based upon the information provided under the Reports of Use requirements for Licensees pursuant to § 370.4 of this chapter and this part. However, in any case in which a Licensee has not provided a compliant Report of Use, whether for the 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 Licensee would not be warranted, the Collective may distribute the royalties associated with the Licensee's missing Report of Use on the basis of Reports of Use for the corresponding calendar year filed by other Licensees.

§ 383.5 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 Licensee'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 Licensee 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 at the rate specified in § 380.2(d) of this chapter. 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. 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 costs of the verification procedure, in addition to paying or distributing the amount of any underpayment.

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

§ 383.6 Terms for making payment of royalty fees.

(a) *Terms in general.* Subject to the provisions of this section, terms governing timing and due dates of royalty payments to the Collective, late fees, statements of account, audit and verification of royalty payments and distributions, retention of records

requirements, treatment of Licensees' confidential information, distribution of royalties by the Collective, unclaimed funds, designation of the Collective, and any definitions for applicable terms not defined in this part and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for digital audio transmission and the reproduction of ephemeral recordings by Commercial Webcasters in part 380, subpart A, of this chapter, for the License Period. For purposes of this part, the term "Collective" refers to the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period, the sole Collective is SoundExchange, Inc.

(b) *Reporting of performances.* Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) *Applicable regulations.* To the extent not inconsistent with this part, all applicable regulations, including part 370 of this chapter, shall apply to activities subject to this part.

Dated: February 25, 2026.

Trevor Jefferson,
Interim Chief Copyright Royalty Judge.

David R. Strickler,
Copyright Royalty Judge.

Steve Ruwe,
Copyright Royalty Judge.

Approved by:

Robert R. Newlen,
Acting Librarian of Congress.

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