

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, DC

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR PERFORMANCE OR DISPLAY OF
NONDRAMATIC MUSICAL WORKS AND
PICTORIAL, GRAPHIC, AND SCULPTURAL
WORKS BY PUBLIC BROADCASTING
ENTITIES (PB III)**

**Docket No. 16-CRB-0002-PBR
(2018-2022)**

**JOINT PROPOSAL OF THE HARRY FOX AGENCY LLC, NATIONAL
MUSIC PUBLISHERS' ASSOCIATION, INC., PUBLIC BROADCASTING SERVICE,
NATIONAL PUBLIC RADIO, INC., AND CORPORATION FOR PUBLIC
BROADCASTING REGARDING FEES FOR
RECORDING RIGHTS UNDER 37 C.F.R. §§ 381.7(B)(1), (B)(2)**

The Harry Fox Agency LLC (“HFA”), the National Music Publishers’ Association, Inc. (“NMPA”), Public Broadcasting Service (“PBS”), National Public Radio, Inc. (“NPR”) and Corporation for Public Broadcasting (“CPB”) (collectively, the “Parties”) join in a proposal concerning certain provisions of 37 C.F.R. § 381.7 and the fees for recording rights under 37 C.F.R. § 381.7(b)(1) and 37 C.F.R. § 381.7(b)(2) for the years 2018 through 2022.

THE PROPOSAL

The recording rights provisions in 37 C.F.R. § 381.7 establish “rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities . . . and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and

displays of musical works solely for the purpose of transmission by public broadcasting entities.”
37 C.F.R. § 381.7(a).

Subsection 381.7(b) contains the royalty rates and related terms for various uses of nondramatic performances and displays of musical works described above. Subsection 381.7(b)(1)(i) provides royalty rates for such uses in PBS-distributed television programs. Subsection 381.7(b)(1)(ii) provides royalty rates for such uses in television programs that are not distributed by PBS. Subsection 381.7(b)(2) provides royalty rates for such uses in an NPR program. Subsection 381.7(b)(4) provides royalty rates for such uses in radio programs not produced by NPR.¹

The Parties propose that the fees for each year of the 2018-2022 statutory license period for uses described in sections 381.7(b)(1) and (b)(2) should be changed to reflect a rate increase consistent with the prior percentage increase from the 2008-2012 license period to the 2013-2017 license period. The Parties propose that the proposed increase in royalty rates under subsections 381.7(b)(1) and (b)(2) is fair and reasonable.

Specifically, the Parties propose that the rates for each year of the 2018-2022 statutory license period for uses described in 37 C.F.R. §§ 381.7(b)(1), (2) should be as follows:

§381.7 Recording rights, rates and terms.

...

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

¹ The rate promulgated under subsection 381.7(b)(4) was the subject of a joint proposal among HFA, NMPA, and the National Religious Broadcasters Noncommercial Music License Committee, dated July 20, 2016. It is not addressed in this joint proposal.

	2018-2022
(A) Feature	\$118.70
(B) Concert feature (per minute)	\$35.65
(C) Background	\$59.99
(D) Theme:	
(1) Single program or first series program	\$59.99
(2) Other series program	\$24.36

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2018-2022
(A) Feature	\$9.81
(B) Concert feature (per minute)	\$2.58
(C) Background	\$4.26
(D) Theme:	
(1) Single program or first series program	\$4.26
(2) Other series program	\$1.69

...

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2018-2022
(A) Feature	\$12.85
(B) Concert feature (per minute)	\$18.86
(C) Background	\$6.44
(D) Theme:	
(1) Single program or first series program	\$6.44
(2) Other series program	\$2.57

...

HFA, NMPA, PBS, NPR and CPB also propose carrying forward unchanged the provisions currently set forth in 37 C.F.R. §§ 381.7(a), (b)(1)(iii), (b)(3), (b)(5), (c), (d), and (e). Proposed regulatory language is set forth in Appendix A hereto.

CONCLUSION

HFA, NMPA, PBS, NPR and CPB respectfully request that the Copyright Royalty Judges adopt their joint proposal.

Respectfully submitted,

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Dated: October 25, 2017

APPENDIX A

§ 381.7 Recording rights, rates, and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2018-2022
(A) Feature	\$118.70
(B) Concert feature (per minute)	\$35.65
(C) Background	\$59.99
(D) Theme:	
(1) Single program or first series program	\$59.99
(2) Other series program	\$24.36

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2018-2022
(A) Feature	\$9.81
(B) Concert feature (per minute)	\$2.58
(C) Background	\$4.26
(D) Theme:	
(1) Single program or first series program	\$4.26
(2) Other series program	\$1.69

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2018-2022
(A) Feature	\$12.85
(B) Concert feature (per minute)	\$18.86
(C) Background	\$6.44
(D) Theme:	
(1) Single program or first series program	\$6.44
(2) Other series program	\$2.57

(3) For purposes of this schedule, a “Concert Feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance, or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

...

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2017, shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates.* The required royalty rates shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use*—(1) *Maintenance of cue sheets.* PBS and its stations, NPR, or other public broadcasting entities shall maintain and make available for examination pursuant to paragraph

(e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners. (2) *Content of cue sheets or summaries.* Such cue sheets or summaries shall include:

- (i) The title, composer and author to the extent such information is reasonably obtainable.
- (ii) The type of use and manner of performance thereof in each case.
- (iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Judges. Deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard music cue sheets or summaries of same listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Royalty Judges upon their request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2017, I caused copies of the foregoing document to be served via eCRB and overnight mail on the following parties.

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/s/ John Beiter

Certificate of Service

I hereby certify that on Wednesday, October 25, 2017 I provided a true and correct copy of the Joint Motion to the following:

Church Music Publishers' Association (CMPA), represented by J. Rush Hicks served via Overnight Service

Broadcast Music, Inc. (BMI), represented by Joseph DiMona served via Electronic Service at jdimona@bmi.com

SESAC, Inc., represented by John C. Beiter served via Electronic Service at jbeiter@lsglegal.com

National Association of College and University Business Officers (NACUBO), represented by Dustin Cho served via Electronic Service at dcho@cov.com

National Religious Broadcasters Noncommercial Music License Comm. (NRBNMLC), represented by Karyn K Ablin served via Electronic Service at ablin@fhhlaw.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

Educational Media Foundation (EMF), represented by David Oxenford served via Overnight Service

Signed: /s/ John C. Beiter