

**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., AND THE NATIONAL RELIGIOUS
BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE
REGARDING FEES FOR RECORDING RIGHTS UNDER 37 C.F.R. § 381.7(B)(4)**

The Harry Fox Agency LLC (“HFA”), the National Music Publishers’ Association, Inc. (“NMPA”), and the National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”) join in a proposal concerning the fees for recording rights under 37 C.F.R. § 381.7(b)(4) for the years 2018 through 2022.

Founded in 1917, NMPA is the principal trade association of music publishers in the United States. NMPA protects and advances the interests of music publishers and songwriters in matters relating to both the domestic and global protection of music copyrights. Taken together, compositions owned or controlled by NMPA members account for the vast majority of the market for musical composition licensing in the U.S. HFA¹ was established in 1927 as an agency to license, collect, and distribute royalties on behalf of musical copyright owners. HFA

¹ The Harry Fox Agency LLC is a subsidiary of SESAC Holdings, Inc. and a sister company to SESAC, Inc., a U.S.-based performing rights organization and a separate participant in these proceedings.

represents more than 48,000 publisher-principals and over 7 million copyrighted musical works. HFA issues licenses for the use of musical works by noncommercial broadcasters, pursuant to 17 U.S.C. § 118, and for use in a variety of products manufactured and distributed in the U.S., on behalf of these publishers. These licenses grant the rights to reproduce and distribute copyrighted musical compositions (songs) for use on CDs, records, tapes, ringtones, permanent digital downloads, interactive streams and other digital formats supporting various business models.

The NRBNMLC is a subcommittee of the National Religious Broadcasters Music License Committee, which is a standing committee of the National Religious Broadcasters. The NRBNMLC represents hundreds of noncommercial educational religious radio broadcasters in music licensing matters and has negotiated on their behalf in this proceeding and prior proceedings under Section 118.

THE PROPOSAL

The recording rights provisions in 37 C.F.R. § 381.7(b)(4) cover the fees for the recording of nondramatic performances and displays of musical works for the types of uses described in 17 U.S.C. § 118(c)(2) and (3) by noncommercial radio stations other than uses in a radio program produced by National Public Radio (“NPR”) and other than uses subject to voluntary license agreements. This form of a joint proposal is used in lieu of a voluntary settlement agreement because the NRBNMLC does not represent all of the radio stations subject to these rates.

HFA, NMPA, and the NRBNMLC propose that the fees for each year of the 2018-2022 statutory license period for uses described in 37 C.F.R. § 381.7(b)(4) should be as follows:

§381.7 Recording rights, rates and terms.

...

(b) *Royalty rate.*

...

(4) For such uses other than in an NPR-produced radio program:

	2018-2022
(i) Feature	\$.81
(ii) Feature (concert) (per half hour)	\$1.69
(iii) Background	\$.41

HFA, NMPA, and the NRBNMLC also propose carrying forward unchanged the provisions currently set forth in 37 C.F.R. §§ 381.1 (except that “January 1, 2013” should be replaced with “January 1, 2018”; and “December 31, 2017” should be replaced with “December 31, 2022), 381.2, 381.9 and 381.11. HFA and NMPA are separately negotiating with National Public Radio, Inc. and the Public Broadcasting Service regarding the provisions in 37 C.F.R. § 381.7 other than 37 C.F.R. § 381.7(b)(4), and expect to file a separate proposal addressing those provisions. Proposed regulatory language for sections 381.1, 381.2, 381.7(b)(4), 381.9, and 381.11 is set forth in Appendix A hereto.

CONCLUSION

HFA, NMPA, and the NRBNMLC respectfully request that the Copyright Royalty Judges adopt their joint proposal.²

² In addition to the NRBNMLC, the only other broadcasting entity that filed a petition to participate in the current Section 118 rate proceeding and is listed on the Participant List that represents radio stations in this category is the Educational Media Foundation (“EMF”), which is a member of the NRBNMLC. EMF joins in this proposal submitted by HFA, NMPA, and the NRBNMLC. This Joint Proposal is also supported by the Church Music Publishers’ Association.

Respectfully submitted,

The HARRY FOX AGENCY LLC

**NATIONAL RELIGIOUS
BROADCASTERS NONCOMMERCIAL
MUSIC LICENSE COMMITTEE**

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Dated: July 20, 2016

APPENDIX A

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2018, and ending on December 31, 2022. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term public broadcasting entity means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.7 Recording rights, rates and terms.

...

(b) *Royalty rate.*

...

(4) For such uses other than in an NPR-produced radio program:

	2018-2022
(i) Feature	\$.81
(ii) Feature (concert) (per half hour)	\$1.69
(iii) Background	\$.41

...

§ 381.9 Unknown copyright owners.

If [PBS and its stations, NPR and its stations,] or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust funds.

§ 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2016, I caused copies of the foregoing document to be served via first-class mail on the following parties.

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