

**Before the  
COPYRIGHT ROYALTY JUDGES**

**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 MOTION OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS &  
PUBLISHERS, BROADCAST MUSIC, INC. & SESAC, INC. REGARDING  
SUBMISSION OF LICENSING AGREEMENTS**

The American Society of Composers, Authors & Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”) and SESAC, Inc. (“SESAC”) (each a “Party” to this proceeding and, collectively, the “Parties”) hereby submit this Joint Motion regarding the electronic filing of voluntarily negotiated license agreements as requested by the Copyright Royalty Judges (the “Judges”) on November 2, 2017.

Each of ASCAP, BMI and SESAC has voluntarily negotiated and entered into a blanket licensing agreement for the 2018-2022 period with the Corporation for Public Broadcasting (“CPB”) covering public performances of each such Party’s respective repertoires by non-commercial broadcast stations affiliated with National Public Radio (“NPR”) and Public Broadcasting Service (“PBS”) and other CPB-qualified non-commercial broadcast radio stations (each such agreement, a “Voluntary License Agreement”). As in prior non-commercial broadcasting rate adjustment cycles under Section 118, and in accordance with 17 USC § 118(b)(2), each of ASCAP, BMI and SESAC submitted a redacted copy of its Voluntary License

Agreement to the Judges. Because they are voluntary agreements, and not pleadings, motions or other documents forming a part of the proceeding docket, they were not filed electronically using eCRB. Rather, each of the Voluntary License Agreements was provided in hard copy and redacted pursuant to past customary practice as necessary to maintain the confidentiality of voluntarily negotiated rates and fees.

### **Voluntary Negotiated Agreements Need Not Be Filed Via eCRB**

17 USC § 118(b)(2) provides that:

License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress or the Copyright Royalty Judges, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.

Section 118, like other sections of the Copyright Act providing compulsory licenses, encourages parties to reach voluntary negotiated settlement agreements in lieu of reliance on the applicable governing statutory license. By allowing the negotiation and subsequent filing of voluntary licensing agreements to occur “at any time” during the five-year rate cycle, Section 118 recognizes that the Voluntary License Agreements are outside of the scope of the CRJs rate-setting authority and not intended to be part of the rate adjustment proceeding itself and, therefore, excluded from the public documents comprising the docket. Indeed, the statute confirms that these rates and terms shall be given effect without any further effort or action by the Judges.

When submitting the agreements to the Judges, the Parties are not asking the Judges to make any determination or take any action of any kind. Unlike the joint proposals submitted by other participants to this proceeding, the Voluntary License Agreements are not included in any promulgated regulations. The purpose of submitting the agreements to the Judges, therefore, is

solely to inform the Judges – and the Judges alone – that the applicable parties have voluntarily agreed on rates and terms. The Voluntary Licensing Agreements have always been treated, by both the Parties and the Judges (and their predecessors), as being separate from the public records of the proceeding.

Moreover, while Section 118(b)(2) provides that the agreements should be filed “in accordance with regulations that the Copyright Royalty Judges shall issue”, the Judges have not promulgated any regulations specific to the filing of voluntarily negotiated license agreements. The regulations promulgated with respect to the filing of documents, and through the eCRB, only refer to the filing of “pleadings and documents in a proceeding before the Copyright Royalty Judges.” See 37 C.F.R. Section 350.3. As the Voluntary License Agreements are not pleadings or documents that are a part of a docketed rate proceeding, filing them via eCRB is unnecessary.

#### **The Voluntary License Agreements May Be Filed in Redacted Format**

Since the inception of the Section 118 license, the Parties have always filed with the Judges (and their predecessors) redacted copies of voluntarily negotiated agreements in order to maintain the confidentiality of voluntarily negotiated rates and fees. Ensuring the confidentiality of proprietary terms and protecting disclosure thereof to third parties (including the Judges) is crucial to encouraging parties to enter into settlement agreements. Therefore, the Parties request that the Judges confirm that the Voluntary License Agreements have been properly filed in accordance with Section 118(b)(2) in their redacted format.

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In conclusion, the Parties request that the Judges accept the Voluntary License Agreements as previously submitted by each of the Parties and to excuse the Parties from additionally filing such Voluntary License Agreements through eCRB, and further request that

the redacted copies of the Voluntary License Agreements be held on file with the Judges as separate confidential documents and not made part of the proceeding docket.

Respectfully submitted,

**AMERICAN SOCIETY OF COMPOSERS, BROADCAST MUSIC, INC. (“BMI”)  
AUTHORS & PUBLISHERS (“ASCAP”)**

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Dated: November 9, 2017

## CERTIFICATE OF SERVICE

I, Janet Fries, hereby certify that on this 9th day of November, 2017, a copy of the foregoing “Joint Motion of the American Society of Composers, Authors & Publishers, Broadcast Music, Inc. & SESAC, Inc. Regarding Licensing Agreements” was served through the eCRB system and by first class mail on the parties listed below.

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*/s/ Janet Fries*

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Janet Fries

# Certificate of Service

I hereby certify that on Thursday, November 09, 2017 I provided a true and correct copy of the Joint Motion to the following:

National Music Publishers Association (NMPA), represented by David Israelite served via U.S. Mail

Public Broadcasting Service, represented by Kenneth L Steinthal served via Electronic Service at [ksteinthal@kslaw.com](mailto:ksteinthal@kslaw.com)

National Public Radio, Inc. (NPR), represented by Joseph Wetzel served via Electronic Service at [jwetzel@kslaw.com](mailto:jwetzel@kslaw.com)

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

Church Music Publishers' Association (CMPA), represented by Jack R Hicks served via Electronic Service at [rushhicks@comcast.net](mailto:rushhicks@comcast.net)

Educational Media Foundation (EMF), represented by David Oxenford served via U.S. Mail

National Association of College and University Business Officers (NACUBO), represented by Ronald G. Dove Jr. served via Electronic Service at [rdove@cov.com](mailto:rdove@cov.com)

Harry Fox Agency (HFA), represented by Christos P Badavas served via Electronic Service at [cbadavas@sesac.com](mailto:cbadavas@sesac.com)

Signed: /s/ Janet Fries