

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)**

**COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS &
PUBLISHERS, BROADCAST MUSIC, INC., NATIONAL PUBLIC RADIO, INC.,
PUBLIC BROADCASTING SERVICE & SESAC, INC.**

The American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), National Public Radio, Inc. (“NPR”), Public Broadcasting Service (“PBS”) and SESAC, Inc. (“SESAC”) (collectively, the “Parties”) submit the following comments in response to the proposed rule published by the Copyright Royalty Board (“CRB”) on October 31, 2017 at 82 Fed. Reg. 51589 (November 7, 2017) (the “Proposed Rule”).

The Proposed Rule includes changes in music performance fees in §381.4 of the CRB regulations, 37 C.F.R. § 381.4, proposed by NPR and PBS. The rates contained currently in Section 381.4 have applied for many years to musical compositions not in the repertoires of BMI, ASCAP and SESAC (collectively, the “PROs”). The license fees for the works represented by the PROs performed on broadcast stations affiliated with NPR and PBS (and stations eligible for funding from the Corporation for Public Broadcasting (“CPB”)), are, as in prior years, covered by voluntary license agreements. As in the past, voluntary licenses between the PROs and PBS/NPR have been submitted to the CRB.

The Proposed Rule seeks to change the current rates in Section 381.4, explaining that these changes conform to the backstop rate contained in 37 C.F.R. §§381.5 and 381.6 for works not represented by BMI, ASCAP and SESAC. 82 Fed. Reg. at 51591. The intention of the proposed §381.4 is to continue to provide a backstop rate for the performance of musical compositions by public broadcasting entities not covered by §§381.5 and 381.6 and for which no other rate in a voluntary license agreement is applicable.¹

While the rates proposed in §§381.5 and 381.6 similarly provide backstop rates, those regulations expressly clarify that the backstop rates apply solely to compositions that are not in the repertoires of ASCAP, BMI and SESAC. Since the intent of the proposed §381.4 is, in part, to track §§381.5 and 381.6, then the limitation to non-PRO repertoires should likewise be explicit.

Accordingly, the Parties propose the following edits to §381.4 set forth in the proposed rule (such additions are highlighted in bold):

381.4. Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

(a) *Determination of royalty rate.* The following rates and terms shall apply to the performance by PBS, NPR and any other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§381.5 and 381.6, and except for compositions which **are in the repertoires of ASCAP, BMI and SESAC or** are the subject of voluntary license agreements: the royalty shall be \$1.

¹ As the Proposed Rule acknowledges, each of the Parties has negotiated voluntary agreements that cover the performance by NPR, PBS and their affiliated broadcast stations (and stations eligible for funding from CPB) of the compositions in the Parties' respective repertoires. 82 Fed. Reg. at 51590. Should a voluntary license terminate prior to the end of the 2018-22 rate period, the backstop rates should not apply to the use of BMI, ASCAP and SESAC repertoire music. Accordingly, the Parties are requesting clarification that in such instance the rates in §§381.4 would not apply by limiting such rates to non-PRO compositions.

Respectfully submitted,

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Dated: November 27, 2017

CERTIFICATE OF SERVICE

I, Janet Fries, hereby certify that on this 27th day of November, 2017, a copy of the foregoing “Comments of the American Society of Composers, Authors & Publishers, Broadcast Music, Inc., National Public Radio, Inc., Public Broadcasting Service & SESAC, Inc.” was served through the eCRB system and by first class mail on the parties listed below.

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