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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)	Docket No. 21-CRB-0001-PR (2023–2027)[1]

COMMENTS IN FURTHER SUPPORT OF THE SETTLEMENT OF STATUTORY ROYALTY RATES AND TERMS FOR SUBPART B CONFIGURATIONS

The National Music Publishers' Association, Inc. ("NMPA") and Nashville Songwriters Association International ("NSAI," and collectively with NMPA, the "Copyright Owners"), on the one hand, and Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp. (collectively, the "Joint Record Company Participants"), on the other hand, respectfully submit these Comments in response to the Judges' notice of proposed rulemaking in the above-captioned proceeding. *See* 86 Fed. Reg. 33601 (June 25, 2021).

The Joint Record Company Participants, NMPA, and NSAI each have a significant interest in this proceeding, as set forth below, as they respectively represent the vast majority of the sound recording, music publishing, and songwriting industries in the U.S.

Specifically, the Joint Record Company Participants each own or operate three of the largest recorded music businesses in the U.S. and, either by themselves or through their subsidiaries and affiliates, own one of the world's largest catalogs of copyrighted sound recordings. Each year those businesses invest in, create, manufacture and/or distribute a large volume of sound

[1] By using this caption, the Joint Record Company Participants (defined above) are not waiving any rights or expressing any agreement concerning the dates that any rates and terms adopted by the Judges in any rate proceeding are to be in effect.

recordings pursuant to mechanical licenses and make substantial royalty payments tied to Section 115 of the Copyright Act. Collectively, products these businesses produce or distribute represent the vast majority of the U.S. sound recording market.

Founded in 1917, the NMPA is a trade association representing the U.S. music publishing and songwriting industry. NMPA protects and advances the interests of over 300 music publishers (who publish and administer catalogs for tens of thousands of songwriters) and their songwriting partners in matters relating to the domestic and global protection of music copyrights. NMPA represents publishers and songwriters of all catalog and revenue sizes, from large international corporations to small businesses and individuals. Musical works owned or controlled by NMPA members account for the vast majority of the market for musical work licensing in the U.S.

Established in 1967, NSAI is a trade organization of over 4,000 members dedicated to serving songwriters of all genres of music. NSAI advocates for the legal and economic interests of songwriters, who derive income from the licensing of their copyrighted works. NSAI's membership includes songwriters who directly publish and license their own music.

On May 25, 2021, the commenters submitted to the Judges a partial settlement regarding the rates and terms under Section 115 of the Copyright Act for physical phonorecords, permanent downloads and other configurations subject to the royalty rates and terms in Subpart B of the mechanical royalty rate regulations (37 C.F.R. Part 385) (the "Settlement"). Since that time, Mr. George Johnson filed three motions objecting to the Settlement, which have been denied by the Judges. In view of this stated opposition by a participant in the proceeding, along with misinformation about the Settlement that appears to be circulating in the music industry, the commenters provide these comments in further support of the Settlement. For the reasons set forth

herein, and in the motion filed by the commenters on May 25, 2021, the Judges should adopt the Settlement.

I. The Settlement provides a "reasonable basis" for setting mechanical royalty rates and terms for Subpart B configurations and hence should be adopted.

Encouraging settlements was a key goal of Congress when it adopted the current rate-setting procedures. H. Rep. No. 108-408, at 30 (Jan. 30, 2004) ("the Committee intends that the bill as reported will facilitate and encourage settlement agreements for determining royalty rates"). Thus, the Copyright Act specifies that the Judges are to adopt a settlement as the statutory royalty rates and terms for the usage specified therein unless a participant in the proceeding who would be bound by the settlement raises an objection and the Judges conclude that the rates and terms set forth in the settlement do not "provide a reasonable basis for setting statutory terms or rates." 17 U.S.C. § 801(b)(7)(A)(ii). Under existing industry conditions, the Settlement of Subpart B configurations in this proceeding is manifestly reasonable.

In 2006-2008, the commenters collectively spent tens of millions of dollars litigating statutory mechanical royalty rates and terms for physical products, permanent downloads and ringtones. After each side presented voluminous evidence of marketplace benchmarks that each respectively believed warranted setting rates either higher or lower, the Judges determined that the rates that are now currently in effect best reflected the marketplace. 74 Fed. Reg. 4510, 4522 (Jan. 26, 2009). They made no adjustments to what they perceived to be a marketplace rate based on the now-repealed Section 801(b)(1) policy objectives. *Id*. at 4522-26.

Since that time, the retail marketplace for music has changed dramatically. In 2006-2008, the Subpart B configurations dominated the recorded music marketplace. By 2020, industry data collected by the Recording Industry Association of America ("RIAA") shows that various forms

of digital streaming constituted 83% of the recorded music market, while physical products had decreased to 9% of the market, and downloads (including ringtones) made up only 6% of the market. *See* Exhibit A. As a result, mechanical royalties from Subpart B configurations now constitute only a small part of total mechanical royalty revenue in the U.S., and that share is expected to get smaller during the period covered by this proceeding.

While the commenters understand and appreciate that Subpart B configurations continue to represent a not immaterial source of revenue for some publishers and songwriters, it is far from clear that either licensors or licensees could expect a material change in statutory mechanical royalty rates for Subpart B configurations if they were to litigate at this time. As a result, the possibility of securing a desired change through litigation must be weighed against the benefits of settling, including locking in a known rate and avoiding the significant cost of litigation. The Settlement reflects the considered judgment of the commenters that reaching an agreement continuing the current statutory royalty rates and terms is consistent with the business and strategic self-interest of the commenters' constituents. *See* 82 Fed. Reg. 15297, 15298 (Mar. 28, 2017) ("the Judges view the settling parties' consensual decision to establish a fixed nominal rate, *i.e.*, unadjusted for inflation, as also representative of their mutual self-interest"). Of course, if trends for Subpart B configurations should change in the future, the commenters can address any such changes in subsequent rate proceedings.

Mr. Johnson provides no basis for the Judges to reject the Settlement. Mr. Johnson makes unfounded accusations of fraud and inaccurate statements concerning the corporate structure of record companies, but provides no economic reason to believe that the rates in the Settlement are outside the "zone of reasonableness." This is nothing more than a rehash of arguments he made

and the Judges rejected when a similar settlement was presented in *Phonorecords III*. *See* 82 Fed. Reg. at 15298-99.

As the Judges explained in *Phonorecords III*, "the proposed rates and terms were negotiated on behalf of the vast majority of parties that historically have participated in Section 115 proceedings before the Judges," and "those parties clearly concluded that the rates and terms were acceptable to both sides." *Id*. As in *Phonorecords III*, the Settlement here was entered into by representatives of buyers and sellers making up the vast majority of the market for mechanical rights for Subpart B configurations, including, on the one hand, both major and independent publishers represented by NMPA and self-published songwriters represented by NSAI, and, on the other hand, record companies representing the vast majority of the market for recorded music. As the Judges have noted, "NMPA and NSAI represent individual songwriters and publishers," and would not "engage[] in anti-competitive price-fixing at below-market rates," since they must "act[] in the interest of their constituents" lest their constituents "seek representation elsewhere." *Id*. at 15298. And certainly it would not be in the interest of any major publisher to agree to extend a below-market mechanical royalty rate to the competitors of its sister record company.

Objections to a settlement that is substantially the same as the one adopted in *Phonorecords III*, absent a showing of changed market conditions that would support a change in the rates and terms for Subpart B configurations at this time, do not permit the Judges to "conclude that the agreement reached voluntarily between the Settling Parties does not provide a reasonable basis for setting statutory terms and rates." *Id*. at 15299. Thus, as in *Phonorecords III*, "the Judges must adopt the proposed regulations that codify the partial settlement." *Id*.

II. The MOU entered into contemporaneously with the Settlement is irrelevant to the Judges' consideration of the Settlement, and does not call into question the reasonableness of the Settlement.

When the commenters submitted the Settlement to the Judges, they noted that "[c]oncurrent with the settlement, the Joint Record Company Participants and NMPA have separately entered into a memorandum of understanding addressing certain negotiated licensing processes and late fee waivers." Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations at 3 (May 25, 2021). Specifically, this memorandum of understanding ("MOU") provides for (1) participating record companies and music publishers to work collaboratively on licensing processes to improve clearance of new releases, (2) a procedure for bulk distribution of mechanical royalties accrued by participating record companies that are not otherwise payable, and (3) late fee waivers when participating record companies follow specified clearance procedures for new releases.

Mr. Johnson's motions refer to "a separate deal or side agreement."[2] These seem to be references to the MOU. Accusations that the MOU is an imagined "sweetheart" side deal are baseless.

The commenters did not present the MOU to the Judges because they viewed it as routine, and irrelevant to the Judges' decision-making concerning the Settlement.[3] This MOU, also known as "MOU4," is the fourth installment in a long-running music industry program for addressing mechanical licensing process issues unique to record companies. All but a low single digit

[2] GEO's Objection to Fraudulent Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations by NMPA, NSAI, RIAA and 3 Foreign Headquartered Corporations at 8-9 (May 26, 2021).

[3] The commenters did substantially the same in *Phonorecords III*. *See* Motion to Adopt Settlement Industry-Wide at 3 (Oct. 28, 2016); Motion to Adopt Settlement at 3 (June 15, 2016).

percentage of the music publishing industry has opted to participate in past versions of the program. Since inception, the MOU licensing processes have enabled better and more efficient identification of musical work owners and resulted in hundreds of millions of dollars in mechanical royalties being properly paid to publishers and songwriters. This successful program has been reported in the trade press,[4] and the second version of the program was described to the Judges in a filing in *Phonorecords II* (*see* Exhibit B). Comprehensive information about prior versions of the program, including copies of predecessor MOUs, is available online at http://nmpalatefeesettlement.com/.

While MOU4 has not yet been posted at http://nmpalatefeesettlement.com/, the MOU is not a secret. Indeed, with the exception of some ministerial changes, MOU4 is essentially the same as the previous MOUs that have for years been fully available to the public online. Nevertheless, to avoid further speculation and any misunderstanding concerning its contents, MOU4 is attached here as Exhibit C. As is apparent from the document, which consists in large part of cross references to past MOUs, the MOU merely continues the longstanding program established by past MOUs with minor changes in detail. Contrary to the conspiracy theories of others, there is no secret payoff to major publishers or to any other MOU participant. A number of independent publishers are parties to the MOU, and the commenters expect thousands of independent publishers to voluntarily opt into the latest MOU as thousands participated in and benefit from the one currently in effect.

[4] *See, e.g.*, Billboard Staff, *Publishing Briefs*, Billboard (Jan. 8, 2010), https://www.billboard.com/articles/business/1213394/publishing-briefs-nmpa-late-fee-site-melvin-brown-peermusic; Ed Christman, *NMPA, Major Labels Sign On Terms Of Agreement*, Billboard (Oct. 7, 2009), https://www.billboard.com/articles/business/1264471/nmpa-major-labels-sign-on-terms-of-agreement.

As is also apparent from MOU4, it is a private contract between willing participants rather than something to be codified in regulations, and it does not address statutory royalty rates. The MOU is therefore irrelevant to the Judges' consideration of the Settlement.

III. Conclusion.

As described above and when the Settlement was submitted to the Judges, the Judges must adopt the Settlement unless a participant in the proceeding who would be bound by the settlement raises an objection and the Judges conclude that the rates and terms set forth in the settlement do not "provide a reasonable basis for setting statutory terms or rates." 17 U.S.C. § 801(b)(7)(A)(ii). So far at least, opponents of the Settlement have provided no basis for rejection of the Settlement that is meaningfully distinct from the arguments previously rejected by the Judges when considering a similar settlement in *Phonorecords III*. The Judges should adopt the Settlement, and they should do so promptly to streamline this proceeding in anticipation of the deadline for filing written direct statements.

Dated: August 10, 2021

Respectfully submitted,

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Exhibit A
Year-End 2020 RIAA Revenue Statistics

YEAR-END 2020 RIAA REVENUE STATISTICS

Joshua P. Friedlander | Senior Vice President, Research and Economics, RIAA

United States recorded music revenues grew 9.2% in 2020 to $12.2 billion at estimated retail value. This is the fifth consecutive year of growth for the industry, as paid subscription services continued to be the primary driver of revenue increases, and reached a record number of subscriptions. Covid-19 affected the industry significantly through tour cancellations, retail store closures, and other disruptions. Revenues from recorded music measured at wholesale value grew 8.9% to $8.0 billion.

FIGURE 1

U.S. MUSIC INDUSTRY REVENUES

Source: RIAA

Streaming

Encompassing a wide range of services, streaming music revenues grew 13.4% to $10.1 billion in 2020. This category includes paid subscription services like Spotify, Apple Music, and Amazon Music Unlimited, ad-supported on-demand services such as Vevo, YouTube and the free version of Spotify, and digital and customized digital radio like Pandora, SiriusXM, and other Internet radio services. The streaming category for the first time includes music license revenues from Facebook and streaming fitness services (included for 2019 data as well). Streaming's share of total revenues has continued to grow, reaching 83% in 2020.

FIGURE 2

U.S. MUSIC INDUSTRY STREAMING REVENUES

Source: RIAA

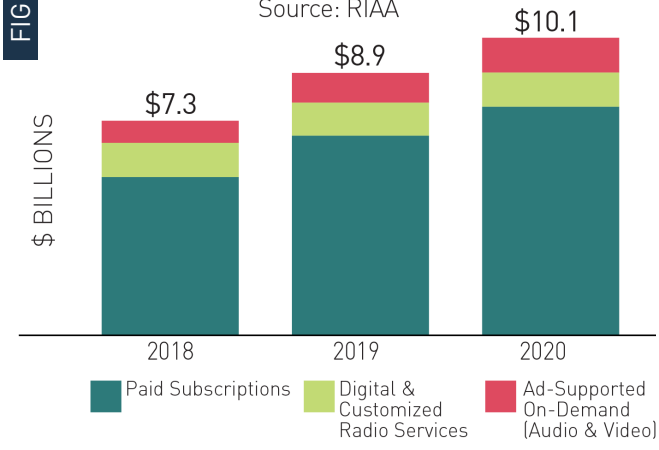
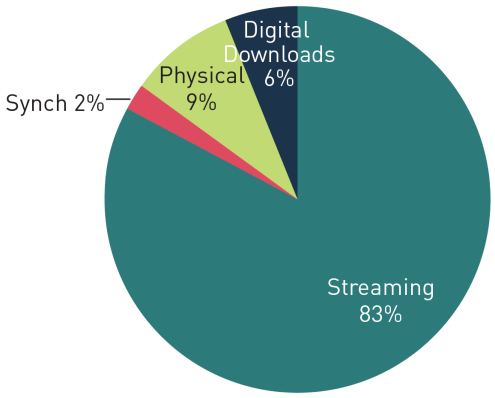


FIGURE 3

U.S. MUSIC INDUSTRY REVENUES 2020

Source: RIAA



Paid subscriptions to on-demand streaming services have contributed the majority of recorded music revenues each year since 2018. In 2020, full service paid subscriptions grew 14.6% to $7.0 billion. Additionally, limited tier paid subscriptions (services limited by factors such as mobile access, catalog availability, product features or device restrictions) grew 13.4% to $724 million. Services like Amazon Prime, Pandora Plus, music licenses for streaming fitness services, and other subscriptions are included in this category. Combined, total paid subscriptions accounted for 64% of total revenues at estimated retail value.

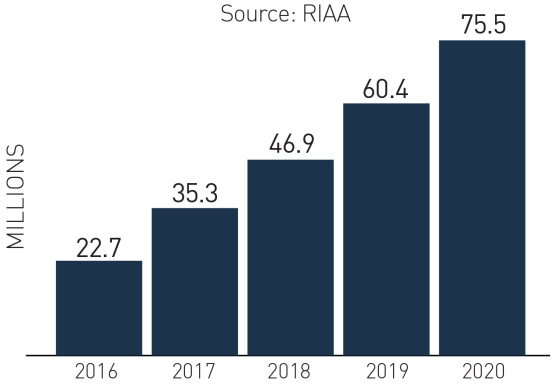
RIAA data analysis by **Joshua P. Friedlander**, Senior Vice President, and **Matthew Bass**, Manager

The number of paid subscriptions to on-demand streaming services continued to increase at double-digit rates in 2020. The average number of subscriptions grew by 15 million from 60.4 million in 2019 to 75.5 million in 2020, the biggest ever increase in a single year. These figures exclude limited-tier services, and count multi-user plans as a single subscription.

FIGURE 4

U.S. PAID MUSIC SUBSCRIPTIONS (ANNUAL AVERAGE)

Source: RIAA



A broad post-Covid-19 decline in advertising revenue growth across many forms of media impacted ad-supported on-demand revenues for music. Revenues from these services (such as YouTube, the free version of Spotify, and Facebook) grew 16.8% annually to $1.2 billion in 2020, compared with an average of nearly 30% growth rate in the 3 years prior. The volume of music streams on these services continued to grow, with hundreds of billions of streams delivered to more than 100 million listeners in the United States, but only contributed 9.7% of revenues.

Revenues from digital and customized radio services grew 3.9% to $1.2 billion in 2020. The category includes SoundExchange distributions for revenues from services like SiriusXM and Internet radio stations, as well as payments directly paid by similar services, included in this report as "other ad-supported streaming". SoundExchange distributions of $947 million were up 4.3% versus the previous year, while other ad-supported streaming revenues of $211 million were up 1.9%.

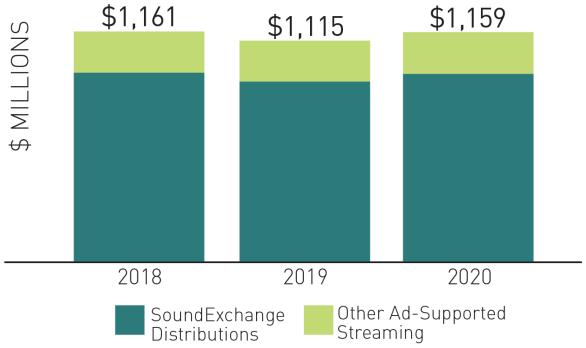
Digital Downloads

Revenues from digitally downloaded music were down 18% to $674 million in 2020. Permanent downloads of albums fell 13% by value to $320 million, and individual track sales were down 23% to $313 million in 2020. Downloads accounted for only 6% of total recorded music revenues in 2020.

FIGURE 5

U.S. DIGITAL AND CUSTOMIZED RADIO REVENUES

Source: RIAA



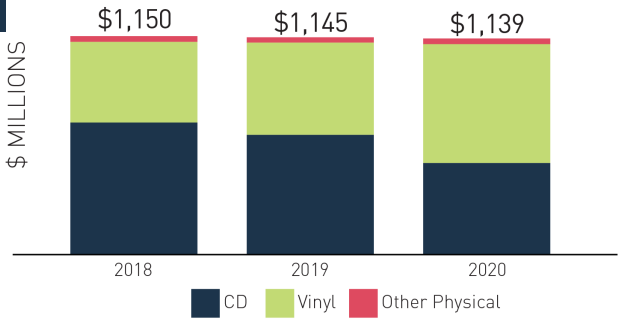
Physical Products

For the first time since 1986, revenues from vinyl records were larger than from CDs. Total revenues from physical products were virtually flat at $1.1 billion (down 0.5%). Despite the challenges to retail sales from Covid-19 restrictions, vinyl grew 28.7% by value year-over-year to $626 million, though still only account for 5.2% of total revenues by value. Revenues from CDs declined 23% to $483 million, continuing a long-term decline.

FIGURE 6

U.S. PHYSICAL FORMAT RECORDED MUSIC REVENUES

Source: RIAA



PLEASE READ THE COMMENTARY OF MITCH GLAZIER, CHAIRMAN AND CEO, HERE: MEDIUM.COM/@RIAA

NOTE – Historical data updated for 2016 - 2019, including updated revenue accounting standards starting in 2016. Formats with no retail value equivalent included at wholesale value. RIAA presents the most up-to-date information available in its industry revenue reports and online statistics database: https://www.riaa.com/u-s-sales-database

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YEAR-END 2020
RIAA MUSIC REVENUE STATISTICS

For a list of authorized services see www.whymusicmatters.com

United States Estimated Retail Dollar Value (In Millions, net after returns)

DIGITAL SUBSCRIPTION & STREAMING		2019	2020	% CHANGE 2019-2020
(Units) (Dollar Value)	**Paid Subscription[1]**	60.4 $6,115.2	75.5 $7,009.2	25.0% 14.6%
	Limited Tier Paid Subscription[2]	$638.2	$723.6	13.4%
	On-Demand Streaming (Ad-Supported)[3]	$1,013.1	$1,183.1	16.8%
	SoundExchange Distributions[4]	$908.2	$947.4	4.3%
	Other Ad-Supported Streaming[5]	$207.3	$211.2	1.9%
	Total Streaming Revenues	**$8,882.0**	**$10,074.5**	**13.4%**
DIGITAL PERMANENT DOWNLOAD				
(Units) (Dollar Value)	**Download Single**	329.7 $408.4	257.2 $312.8	-22.0% -23.4%
	Download Album	37.5 $368.8	33.1 $319.5	-11.7% -13.4%
	Ringtones & Ringbacks	8.3 $20.6	8.1 $20.2	-1.9% -1.9%
	Other Digital[6]	1.8 $25.0	1.6 $21.9	-12.9% -12.4%
	Total Digital Download Revenues	**$822.7**	**$674.4**	**-18.0%**
TOTAL DIGITAL VALUE		$9,704.7	$10,749.0	10.8%
	Synchronization Royalties[7]	$281.1	$265.2	-5.6%
PHYSICAL				
(Units Shipped) (Dollar Value)	**CD**	47.5 $630.7	31.6 $483.3	-33.6% -23.4%
	LP/EP	18.5 $479.5	22.9 $619.6	23.6% 29.2%
	Music Video	1.3 $25.8	1.0 $27.4	-20.9% 6.2%
	Other Physical[8]	0.4 $8.5	0.5 $8.8	24.0% 3.1%
	Total Physical Units **Total Physical Value**	**67.7** **$1,144.6**	**55.9** **$1,139.1**	**-17.4%** **-0.5%**

TOTAL DIGITAL AND PHYSICAL

Total Units[9] **Total Value**	**445.0** **$11,130.4**	**355.9** **$12,153.4**	**-20.0%** **9.2%**

% of Shipments[10]	**2019**	**2020**
Physical	11%	10%
Digital	89%	90%

Retail Value is the value of shipments at recommended or estimated list price
Formats with no retail value equivalent included at wholesale value

Note: Historical data updated for 2019

[1] Streaming, tethered, and other paid subscription services not operating under statutory licenses
Subscription volume is annual average number of subscriptions, excludes limited tier

[2] Paid streaming services with interactivity limitations by availability, device restriction, catalog limitations, on demand access, or other factors

[3] Ad-supported audio and music video services not operating under statutory licenses

[4] Estimated payments to performers and copyright holders for digital and customized radio services under statutory licenses

[5] Revenues for statutory services that are not distributed by SoundExchange and not included in other streaming categories

[6] Includes Kiosks, music video downloads, and starting in 2016 other digital music licensing

[7] Includes fees and royalties from synchronization of sound recordings with other media

[8] Includes CD Singles, Cassettes, Vinyl Singles, DVD Audio, SACD

[9] Units total includes both albums and singles, and does not include subscriptions or royalties

[10] Synchronization Royalties excluded from calculation

Exhibit B
Supplemental Statement in *Phonorecords II*

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of: Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords	Docket No. 2011-3 CRB Phonorecords II

SUPPLEMENTAL STATEMENT OF RIAA AND NMPA

The Recording Industry Association of America, Inc. ("RIAA") and the National Music Publishers' Association, Inc. ("NMPA") respectfully submit this Supplemental Statement in connection with the Motion to Adopt Settlement ("Motion") filed by them and other participants in this proceeding. This Supplemental Statement is submitted in connection with Section 385.4 of the proposed regulations appended to the Motion, to describe a Memorandum of Understanding entered into by RIAA, NMPA and The Harry Fox Agency, Inc. ("HFA") in connection with the Judges' adoption of current Section 385.4 and a similar Memorandum of Understanding entered into by those parties and others as a package with the settlement addressed by the Motion (the "2013-2017 Settlement").

In the last Section 115 rate-setting proceeding, the Copyright Royalty Judges adopted for the first time a late fee applicable under Section 115. As a result, RIAA and NMPA began discussions to improve industry licensing processes and resolve certain disputed issues relating to late payments. These discussions led to a Memorandum of Understanding (the "MOU") between RIAA, NMPA and HFA dated November 10, 2009. The MOU created a comprehensive program for the major record companies and participating music publishers to work together to improve mechanical licensing practices and encourage prompt dispute resolution, and for publishers to waive certain late fees during the current statutory mechanical

royalty period for major record companies who complied with the licensing and clearance rules and practices set forth in the MOU. Over 97% of the music publishing industry on a market share basis ultimately opted to participate in the MOU. In connection with the 2013-2017 Settlement, the parties have simultaneously agreed to the continuation in the proposed regulations of the late fee term of Section 385.4 and a new Memorandum of Understanding ("MOU 2") providing for the continuation for the next rate period of improved processes for the clearance and/or licensing of product and late fee waivers similar to those applicable under the original MOU.

The original MOU addressed three primary aspects of payments by record companies to music publishers, (i) the bulk distribution of pending and unmatched ("P&U") royalties, (ii) the implementation of processes for record companies and music publishers to work cooperatively on clearance and/or licensing of new releases, and in the absence of agreement concerning ownership and rates, a path to resolution of disputes and payment where possible, and (iii) waiver of the late fee in certain instances where record companies were in compliance with the practices set forth in the MOU.

The processes in the original MOU have worked well for the parties. The MOU2 will continue, and expand in some instances, the practices and processes set forth in the original MOU. The parties to the MOU and MOU 2 are pleased that they were able to agree concerning these matters in connection with the proposed 2013-2017 Settlement.

Respectfully submitted,

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Exhibit C
Memorandum of Understanding

CONFIDENTIAL – FOR SETTLEMENT PURPOSES ONLY

MEMORANDUM OF UNDERSTANDING–4

This Memorandum of Understanding–4 ("MOU4") is entered into by and between Sony Music Entertainment ("SME"), UMG Recordings, Inc. ("UMG"), Warner Music Inc. ("WMG") and the Recording Industry Association of America, Inc. ("RIAA") on the one hand, and the National Music Publishers' Association, Inc. ("NMPA") and the undersigned music publishing companies, on the other hand (all foregoing entities referred to individually as a "Party" and collectively as "Parties").

WHEREAS, RIAA, NMPA and The Harry Fox Agency, Inc. ("HFA") entered into a Memorandum of Understanding effective as of November 10, 2009 (as amended, "MOU1");

WHEREAS, the same entities, together with SME, WMG, and UMG and various music publishing companies, entered into a Memorandum of Understanding–2 effective as of April 11, 2012 (as amended, "MOU2");

WHEREAS, RIAA, NMPA, SME, WMG, UMG and various music publishing companies entered into a Memorandum of Understanding–3 effective as of October 28, 2016 (as amended, "MOU3"), which superseded a Memorandum of Understanding–3 among some of those entities effective as of June 15, 2016;

WHEREAS, the Parties wish to extend substantially the same arrangements that presently apply pursuant to MOU1, MOU2 and MOU3, with certain changes in detail, until December 31, 2027, or such later date that, pursuant to 17 U.S.C. § 803(d)(2)(B), the royalty rates and terms to be set in the mechanical royalty rate-setting proceeding presently pending before the Copyright Royalty Judges as Docket No. 21-CRB-0001-PR (2023-2027) (the "*Phonorecords IV*

Proceeding") are superseded by successor rates and terms determined in the next such proceeding after the *Phonorecords IV* Proceeding (the "End Date");[1]

WHEREAS, in entering into this MOU4, the Parties wish to reiterate their mutual desire to work together to establish a framework for: (i) clearance of and/or issuance of licenses to musical works by Participating Publishers for use in sound recordings; (ii) settlement of disputes affecting the payment of certain royalties; and (iii) improvement of industry licensing practices, so that royalties can be paid to copyright owners in a more timely and efficient manner; and

WHEREAS, the Parties hereby agree to the conditioned waiver of late fees provided in this MOU4 and to certain additional terms in connection with a proposed partial settlement of the *Phonorecords IV* Proceeding, including of the late fee set forth in 37 C.F.R. § 385.3;

NOW THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following terms and conditions:

1. Relationship between MOU1, MOU2, MOU3 and this MOU4; Term. MOU1, MOU2 and MOU3 continue in effect in accordance with their terms. This MOU4 is a separate, conditional agreement that shall not go into effect until NMPA, SME, WMG's affiliate Warner Music Group Corp., and UMG submit a motion to adopt a proposed settlement of the *Phonorecords IV* Proceeding as to statutory royalty rates and terms for physical phonorecords, permanent downloads, ringtones and music bundles presently addressed in 37 C.F.R. Part 385 Subpart B (the "Subpart B Configurations"), together with (1) certain definitions applicable to

[1] For the avoidance of doubt, a determination by the Copyright Royalty Judges to continue some or all of rates and terms existing for the period covered by the *Phonorecords IV* Proceeding into the next such period shall qualify as superseding, successor rates and terms. If for any reason, by reason of legislation or otherwise, there should be no rate-setting proceeding after the *Phonorecords IV* Proceeding, the End Date will be December 31, 2027.

Subpart B Configurations presently addressed in 37 C.F.R. § 385.2 and (2) late payment fees under Section 115 for Subpart B Configurations presently addressed in 37 C.F.R. § 385.3, together with certain definitions applicable to such late payment fees presently addressed in 37 C.F.R. § 385.2, for the rate period covered by the *Phonorecords IV* Proceeding, which the Parties anticipate happening promptly after this MOU4 has been signed by SME, UMG, WMG, RIAA, NMPA, Sony Music Publishing, Universal Music Publishing Group, and Warner Chappell Music, Inc. (the "Initial Signatories"). It is understood that only the Initial Signatories will sign this MOU4 at the outset, and that NMPA shall use its best efforts to obtain the signatures to this MOU4 by all of the remaining Parties within two (2) weeks thereafter. This MOU4 is effective when a motion to adopt such a settlement is submitted to the Copyright Royalty Judges (the "Effective Date"), and will remain in effect until the End Date, subject to the survival provisions of Section 4.9 and 7.3 of this MOU4. The termination provisions of Section 4.16 of MOU1 shall not apply to this MOU4. Except as otherwise specifically provided herein, this MOU4 incorporates and applies the definitions, terms, restrictions and other provisions of MOU1, MOU2 and MOU3 (including modifications of earlier such agreements in later such agreements), which shall apply to the term of this MOU4 and the Group 6 Products covered by this MOU4 with any necessary changes in detail to reflect the different time periods involved, as among the participating entities described in Article 3 hereof. Provisions of MOU1, MOU2 or MOU3 superseded by later such agreements, including those described in Section 4.10 of MOU2, shall continue to have no force and effect under this MOU4.

2. Late Fee Waivers. As of the Effective Date of this MOU4 as to the Parties, or upon opting-in in the case of any Publisher opt-in as provided herein, the Participating Publishers hereby grant to each Participating Record Company a conditioned Late Fee Waiver as provided

in Article 7 of MOU1 and/or other applicable provisions of MOU1, MOU2, MOU3 and this MOU4. For the avoidance of doubt, such Late Fee Waiver is subject to the Participating Record Company's continued adherence to applicable terms and conditions of this MOU4 (including applicable terms and conditions of MOU1, MOU2 and MOU3 incorporated herein) upon which such a Late Fee Waiver is conditioned, and particularly to the Default Rules and Best Practices heretofore and herein agreed to by the Parties.

3. Participation.

3.1. Signatory Parties. The signatory Parties to this MOU4 shall be SME, UMG, WMG, RIAA, NMPA, and the individual Publishers who sign this MOU4 in their individual capacities (including Publishers who sign this MOU4 after the Effective Date (if any)).

3.2. Opt-in Parties and Process. During the second half of 2022 (unless otherwise agreed by NMPA and RIAA), NMPA will notify Publishers in substantially the same manner as Publishers were notified in the registration processes under MOU1, MOU2 and MOU3 that they have ninety (90) days from the date of such notice to opt-in to this MOU4. The Parties shall use all commercially reasonable efforts to complete all necessary opt-in materials, and NMPA shall use all commercially reasonable efforts to commence such notification process, so as to have the opt-in period closed as to all Publishers by no later than December 31, 2022. The Parties acknowledge and agree that those Publishers that have signed this MOU4 are deemed to have opted into its terms and conditions. The Parties understand, acknowledge and agree that consistent with the process outlined in MOU2 (but unlike MOU1), the Participating Publishers will be required to opt in to this MOU4 prior to a determination of the total amount of the Group 6-A P&U Royalties and each Participating Publisher's share of such P&U Royalties.

Prior to the bulk distributions of Group 6-A P&U Royalties and Group 6-B P&U Royalties (as described in Article 4 of this MOU4), the Administrator shall conduct further opt-in processes, in substantially the same manner as the opt-in processes were conducted under MOU1, MOU2 and MOU3, in order to enroll additional Participating Publishers. Consistent with Section 4.15 of MOU1, where a Publisher has already opted into this MOU4 and become a Participating Publisher with respect to Group 6-A, the Administrator shall not be required to conduct a further opt-in process with respect to such Publisher for Group 6-B, because such Publishers necessarily will participate in the Group 6-B distribution process.

3.3. Releases. For the avoidance of doubt, each Participating Publisher that opts into this MOU4 as described in Section 3.2 shall be required to provide a release in substantially the same form that was approved by RIAA and NMPA and used under MOU1 (which was based on Exhibit H to MOU1), subject to RIAA review and confirmation of such form of release in the same manner as provided in Section 4.15 of MOU1. Each Participating Publisher that is a signatory Party hereby binds itself to the form of release that is used in the MOU4 opt-in process.

4. Bulk Distributions of P&U Royalties for Group 6.

4.1. In General. Under this MOU4, the Parties shall effectuate market share-based distributions of P&U Royalties for Group 6 Product using essentially the same process as was used under MOU1 for Group 1 Product and Group 2 Product, under MOU2 for Group 3 Product and Group 4 Product, and under MOU3 for Group 5 Product (for ease of reference, all Groups are referred to herein with Arabic numerals rather than Roman numerals), as further described in the remainder of this Article 4 and in the schedule attached as Exhibit A. "Group 6 Product" means Product distributed in the United States with a Release Date in a year between

2023 and 2027 (inclusive). Group 6 shall be divided into "Phases," and initial bulk distributions for each Phase shall be based on Product Distributions of the relevant Products through Cut-off Dates, as follows:

Group	Phase	Release Years	Cut-off Date
6	A	2023-2024	December 31, 2026
6	B	2025-2027	December 31, 2029

Each applicable Cut-off Date shall also be the deadline for Participating Publishers to provide the Participating Record Companies with ownership and split information for musical works for which they would like to receive payment directly (and that will be excluded from the relevant initial bulk distribution, as described in Sections 4.3 and 4.9 of MOU1). For the avoidance of doubt, the Parties acknowledge and agree that Product Distributions after the relevant Cut-off Date for the Phase concerned shall be handled in the same manner as provided in Section 4.22 and 5.11 of MOU1, so that the Participating Record Companies shall have a continuing sales payment obligation with respect to Group 6 as provided in Section 4.22 and 5.11 of MOU1.

4.2. Administrator. By no later than June 30, 2022, NMPA shall appoint an Administrator for this MOU4 to perform substantially similar functions as those performed by HFA under MOU1, MOU 2 and MOU3. The provisions of Section 5.2 of MOU1 concerning appointment of an Administrator shall apply. For the avoidance of doubt, with respect to MOU1, MOU2, MOU3 and Groups 1-5 Product thereunder, HFA shall continue in its role unless otherwise decided by NMPA. The Administrator shall have the same rights, obligations, powers and authority, and shall comply with all applicable procedures, as set forth in Articles 4 and 5 of MOU1, except as otherwise specifically provided in MOU2, MOU3 or this MOU4.

4.3. Licensing Procedures. Except as set forth in this Article 4, the procedures set forth in Article 6 of MOU1 (as incorporated into MOU3 and modified from time to time by

amendments thereto or by the Best Practices Group) for the clearance and/or issuance of licenses with respect to musical works embodied in Group 5 Products shall remain in full force and effect and shall apply to Group 6 Products as well. Accordingly, for each of Groups 6-A and 6-B, prior to the applicable Cut-off Date, the Participating Record Companies and Participating Publishers shall continue to seek to clear and/or have licenses issued with respect to relevant works that are the subject matter of the P&U Royalties, using the Best Practices and Default Rules as applicable and as amended from time to time. The Parties acknowledge that clearance and/or licensing of such works is intended to reduce the amount of the P&U Royalties subject to bulk distribution to the Administrator.

4.4. Publisher Payment Data and Attestations Thereof. By no later than June 30, 2025, each Participating Record Company shall submit to the Administrator Publisher Payment Data covering Publisher Payments made by the Participating Record Company for the period January 1, 2023 to December 31, 2024, in the same manner as required by Section 4.7 and 5.4 of MOU1. This Publisher Payment Data shall provide the basis for the Group 6-A bulk distribution. By no later than June 30, 2028, each Participating Record Company shall submit to the Administrator Publisher Payment Data covering Publisher Payments made by the Participating Record Company for the period January 1, 2025 to December 31, 2027, in the same manner as required by Section 4.7 and 5.4 of MOU1. This Publisher Payment Data shall provide the basis for the Group 6-B bulk distribution. For each delivery of Publisher Payment Data under MOU4, each Participating Record Company shall provide to the Administrator a letter signed by its Chief Financial Officer ("CFO") or a senior executive whose responsibility includes oversight of Publisher Payments representing and warranting on behalf of the Participating Record Company that the Publisher Payment Data is as maintained by the

Participating Record Company in the ordinary course of business and, to the best of that person's knowledge, is an accurate reflection of the Participating Record Company's Publisher Payments for the relevant period. Notwithstanding any other attestation requirement (including Section 4.8 and 5.4 of MOU1, Section 4.6 of MOU2, Section 5.6 of MOU3 and Section 4.6 of this MOU4), such a letter shall be the sole attestation required for Publisher Payment Data under MOU4. However, for clarity, the attestation provisions set forth in MOU3 will continue to apply for purposes of MOU3.

4.5. Matching of Publisher Payment Data. The Administrator, or its designee, will aggregate and match the Publisher Payment Data and will identify the respective market share percentages for each Participating Publisher under this MOU4.

4.6. Participating Record Company Attestations of P&U Royalties. The Parties agree that for purposes of P&U Royalties under this MOU4, the attestation requirements shall be as follows (and not as described in Section 4.6 of MOU 2):

(1) In the first instance, Participating Record Companies will not be required to provide the outside auditor attestations of their P&U Royalties.

(2) Instead, at the relevant time, each Participating Record Company will have one or more individuals who were not personally involved in generating the schedule of P&U Royalties proposed to be provided to the Administrator (*e.g.*, internal audit staff) carry out substantially the same verification procedures for that Participating Record Company's P&U Royalties as set forth in the applicable form in Exhibit C of MOU 1, under the supervision of the Participating Record Company's CFO.

(3) Upon the completion of such procedures, each Participating Record Company will, in lieu of an attestation from its outside auditor, provide a letter from its CFO representing and warranting that the reported amounts of P&U Royalties were: (a) prepared in accordance with MOU requirements, and (b) subjected to substantially the same verification procedures applicable to that Participating Record Company's P&U Royalties as set forth in the applicable form in Exhibit C of MOU 1, as detailed in the CFO's letter. The CFO's letter will further certify that: (i) the CFO is duly authorized to provide this representation and warranty on behalf of the Participating Record Company; and

(ii) all statements of fact contained in the letter are true, complete, and correct to the best of the CFO's knowledge, information, and belief, and are made in good faith. Subject to the provisions of this Section 4.6 below, the CFO's letter will be treated as the relevant attestation for purposes of provisions of MOU 1 and MOU 2 incorporated herein.

(4) The CFO certifications will be used by the Administrator to determine the relevant MOU4 payment amounts unless the Administrator (or NMPA Representative, as described below) has any concerns about the accuracy of the CFO certifications (*e.g.*, because of anomalies in the reported P&U Royalties).

(5) If the Administrator (or NMPA Representative, as the case may be) has any such concerns, the Administrator (or NMPA Representative) shall promptly notify the Participating Record Company concerned, and the Participating Record Company shall then discuss the matter with the Administrator (or NMPA Representative) and attempt to determine whether there is an explanation for any issue perceived by the Administrator (or NMPA Representative) or if the Administrator's (or NMPA Representative's) concerns otherwise can be addressed.

(6) If such discussions do not alleviate the Administrator's (or NMPA Representative's) concerns, then, within 30 days following receipt of a CFO certification, the Administrator (or NMPA Representative) may in writing request that the Participating Record Company provide the outside auditor certification for the relevant information as described in Section 4.6 of MOU 2. In such an event, the Participating Record Company will have 60 days from the date of the request to provide such an outside auditor certification to the Administrator (or NMPA Representative). Such certification process shall be at the sole expense of the Participating Record Company.

(7) To avoid any delay in distribution of P&U Royalties to Participating Publishers, if the Administrator was otherwise ready to notify Participating Record Companies of their payment amounts, receive P&U payments, and begin P&U distributions, the Administrator may do so based on the CFO certification even if the Administrator (or NMPA Representative) expressed concerns to the Participating Record Company or requested an outside auditor certification. If the outside auditor process ultimately reveals a discrepancy, there will be a prompt true-up.

(8) If an outside auditor certification process requested by the Administrator (or NMPA Representative) as described above reveals material discrepancies in a Participating Record Company's P&U Royalties that had previously been subject to a certification from its CFO, and after further discussions between the Administrator (or NMPA Representative) and the Participating Record Company, the Administrator (or NMPA Representative) has concerns regarding that Participating Record Company providing accurate CFO certifications on a going

forward basis, the Administrator (or NMPA Representative) may require that Participating Record Company to follow the outside auditor certification process described in Section 4.6 of MOU 2 for MOU4 P&U Royalties on a going forward basis.

(9) If NMPA would prefer not to have the Administrator speak for NMPA concerning these certification procedures, NMPA may by written notice to RIAA designate an "NMPA Representative" to perform certain functions of the Administrator as identified above instead of the Administrator, provided that at all times only one party is communicating with Participating Record Companies on behalf of NMPA and Participating Publishers concerning these matters. The NMPA Representative will be subject to the same level of confidentiality that the Administrator is subject to hereunder.

4.7. Payment of P&U Royalties. Provided that the Administrator has concluded the opt-in process and determined Participating Publisher Market Shares as described in Section 3.2 and 4.5, and provided notice of such Publisher Market Shares and the relevant payment amounts in the same manner as in Section 4.18 of MOU1 after receiving the relevant CFO letters or attestations pursuant to Section 4.6 of this MOU4, then within thirty (30) days after receiving notice of payment amount, each Participating Record Company shall pay the Administrator the accrued P&U Royalties for Releases in the relevant Phase corresponding to its Publisher Market Share of Participating Publishers. NMPA shall keep RIAA reasonably advised concerning the likely timing of its notice of payment amounts.

4.8. Distribution. The Administrator will distribute the P&U Royalties paid by Participating Record Companies on a market share basis, less the actual costs of administration and any legal fees incurred in connection with the program, as provided in Section 4.20 and Article 10 of MOU1. For the avoidance of doubt, as provided in Section 10.3 of MOU1, it shall not be a breach of this MOU4 if NMPA chooses to seek a donation from Participating Publishers as part of the enrollment process. If, after the Administrator's final accounting and resolution of any disputes, Participating Publisher claims for a given Phase of Group 6 are for less than the

payments made by a Participating Record Company for such Phase, then the Administrator shall return any unclaimed monies to the Participating Record Company, and Section 4.21 of MOU1 shall apply, unless RIAA and NMPA agree to simplified procedures for the refund process.

4.9. Survival. Notwithstanding Section 12.10 of MOU1, all applicable provisions of this MOU4 shall continue to apply to Group 6 Product even after the End Date, so long as the Participating Record Company is not in breach of this MOU4 (in which case the provisions of Article 9 of MOU1 shall apply). Thus, for example, and not by way of limitation, Group 6-B Product shall remain subject to clearance and/or licensing efforts under this MOU4 using the Best Practices and Default Rules between the End Date and the Group 6-B Cut-off Date; Late Fee Waivers shall continue to apply; the bulk distribution process described in Article 4 of this MOU4 shall be carried on even though it extends past the End Date; continuing sales payments shall be made indefinitely; and the releases described in Section 3.3 of this MOU4 shall apply to Group 6 Product for which P&U Royalties are paid under this MOU4.

5. Default Rules and Best Practices.

5.1. Generally. The Default Rules and Best Practices shall continue in full force and effect and be applicable under this MOU4, except as specifically modified or amended by this MOU4 or by mutual agreement by the Best Practices Group (as described in Sections 7.3 and B.2.1 of MOU1). If the Best Practices Group under MOU3 agrees to modify any Default Rules and Best Practices applicable under MOU3 during the term thereof, such modified Default Rules and Best Practices shall also be applicable to this MOU4.

5.2 Discussions of Operations. The Initial Signatories agree to discuss in good faith whether there are meaningful changes in licensing practices between music publishers and record companies that would improve efficiency or otherwise be mutually beneficial, with

the aim of concluding such discussions by no later than June 30, 2022. It is the Parties' expectation that where the Parties' have agreed upon a change or new practice that would improve efficiency or otherwise be mutually beneficial, it shall be adopted as Default Rules or Best Practices or amendments thereto as applicable, and may be presented to Publishers in connection with the opt-in process described in Section 3.2 if warranted.

6. Cross Licenses

6.1. To Participating Record Companies.

(1) Each Participating Publisher hereby grants to all Participating Record Companies a nonexclusive, royalty-free license for the period beginning on the effective date of the royalty rates and terms to be set in the *Phonorecords IV* Proceeding and ending on the End Date (the "*Phonorecords IV* Period") to engage in and authorize the following promotions described in 37 C.F.R. § 385.14 as in effect prior to the rates and terms to be set in Copyright Royalty Board Docket No. 16-CRB-0003-PR (2018-2022) ("*Phonorecords III*") and attached in Exhibit B ("prior 37 C.F.R. § 385.14") with respect to audio sound recordings embodying musical compositions owned or controlled by such Participating Publisher on the same terms as set forth in such regulations attached as Exhibit B:

(a) Streaming through record company and artist services (as described in prior 37 C.F.R. § 385.14(c)); and

(b) Streaming of 30-second preview clips of released recordings, and 90-second preview clips of pre-release recordings (during the window provided in prior 37 C.F.R. § 385.14(a)(1)(ii)(B)), in online stores selling permanent downloads and/or physical products, as described in prior 37 C.F.R. § 385.14(d), in cases in which the Participating Record Company is contractually responsible for clearing publishing rights for preview clips.

For clarity, such license shall not apply to free trials on third party streaming services, and the Participating Record Company shall have no right hereunder to grant rights to third party streaming services to exploit musical compositions at the zero rate set forth in prior 37 C.F.R. § 385.14 within such streaming services.

(2) Each Participating Publisher hereby authorizes all Participating Record Companies that obtain or have obtained licenses extending to permanent digital downloads, ringtones or physical phonorecords to enable end user purchasers of such permanent digital downloads, ringtones or physical phonorecords through a "qualifying seller" as defined in paragraph (1) of the definition of "Purchased Content Locker Service" in 37 C.F.R. § 385.21 as in effect prior to the rates and

terms to be set in *Phonorecords III* and attached in Exhibit B ("prior 37 C.F.R. § 385.21"), during the *Phonorecords IV* Period, by means of a Purchased Content Locker Service as therein defined, (i) receive one or more additional phonorecords of such purchased sound recordings of musical works in the form of permanent digital downloads or ringtones at the time of purchase, or (ii) subsequently access such purchased sound recordings of musical works in the form of interactive streams, additional permanent digital downloads, restricted downloads or ringtones, provided that the relevant Participating Record Company pays mechanical royalties (if any) at the rate set forth in 37 C.F.R. 385.23(a)(5) as in effect prior to the rates and terms to be set in *Phonorecords III* and attached in Exhibit B ("prior 37 C.F.R. § 385.23"). For clarity, the Participating Record Company shall have no right hereunder to grant to third party locker services the right to stream musical compositions embodied in its recordings beyond the scope of the Purchased Content Locker Service definition in prior 37 C.F.R. § 385.21 or the terms provided in prior 37 C.F.R. § 385.23(a)(5).

6.2. To Participating Publishers. Each Participating Record Company hereby grants to all Participating Publishers a reciprocal nonexclusive, royalty-free license for the *Phonorecords IV* Period to engage in and authorize streaming through Participating Publisher and affiliated songwriter services (as described in prior 37 C.F.R. § 385.14(c), substituting Participating Publisher for "record company" or "record companies" as applicable and songwriter for "recording artist" or "artist" as applicable) with respect to audio sound recordings owned or controlled by such Participating Record Company embodying musical compositions owned or controlled by such Participating Publisher on the same terms as set forth in such regulations. For clarity, such license shall not apply to activity on third-party services, and the Participating Publisher shall have no right hereunder to grant rights to third party services to exploit sound recordings.

6.3. No Prejudice to Other License. For clarity, the licenses granted in Section 6.1(1) and 6.2 are without prejudice to any other license that has been or may be granted pursuant to provisions of the Copyright Act or as between any relevant licensor and licensee. The licensee thereunder may elect to rely on any such other applicable license, rather than a

license granted in Section 6.1(1) or 6.2, if such other license is legally valid and such other license does not expressly prohibit such reliance.

7. Miscellaneous.

7.1. Notices. All notices shall be in writing and shall be transmitted in the manner set forth in Section 12.11 of MOU1 to the person identified therein. Notwithstanding the foregoing, (1) notices to NMPA and the Administrator shall be sent to the General Counsel of NMPA at 1900 N Street, NW, Suite 500, Washington, DC 20036, and (2) notices to RIAA shall be sent to the General Counsel of RIAA at 1000 F Street, NW, Floor 2, Washington, DC 20004.

7.2. Governing Law. The governing law shall continue to be the law of the State of New York.

7.3. Entire Agreement; Survival. Subject to Article 1, this MOU4 shall constitute the entire understanding between the Parties with respect to its subject matter and the time period covered hereby. Any provisions that survive MOU1 under Section 12.10 thereof shall survive this MOU4, and additional provisions of this MOU4 shall survive as provided in Section 4.9 hereof. This MOU4 may not be altered or amended except by a written instrument executed by representatives of all the Parties.

7.4. Counterparts. This MOU4 may be executed in counterparts, including by means of PDF signature pages or other electronic communication, each of which shall be deemed to be an original, but which taken together shall constitute one agreement. This MOU4 shall not become effective until it has been entered into by all Parties and the condition specified in Article 1 is satisfied.

7.5 No Waiver; Use in Proceedings. This MOU4 represents a settlement of certain disputed issues relating to Late Fees and industry licensing processes. The Parties agree

and acknowledge that in entering into and/or participating in this MOU4, no Party, Participating Record Company or Participating Publisher shall be considered to be waiving any legal right or position concerning Late Fees (except to the extent a Late Fee Waiver applies). The Parties, Participating Record Companies and Participating Publishers shall not use this MOU4 in any proceeding before the Copyright Royalty Judges (including in any review of a determination in such a proceeding by the Register of Copyrights or the appeal of such a determination before a court) as the basis for arguing that Late Fees should, or should not, be included as a term under the Section 115 compulsory license. Notwithstanding the foregoing, the Parties may in any future proceeding inform the Judges of this MOU4 and describe its purpose.

IN WITNESS WHEREOF, the Parties have caused this MOU4 to be executed by their duly authorized representatives as of the date set forth below.

[Signatures on next page]

SONY MUSIC ENTERTAINMENT

By: Julie Swidler (May 18, 2021 18:29 EDT)

Name: Julie Swidler

Date: May 18, 2021

UMG RECORDINGS, INC.

By: _____

Name: _____

Date: _____

WARNER MUSIC INC.

By: _____

Name: _____

Date: _____

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By: _____

Name: _____

Date: _____

NATIONAL MUSIC PUBLISHERS ASSOCIATION, INC.

By: _____

Name: _____

Date: _____

SONY MUSIC ENTERTAINMENT

By: _____

Name: _____

Date: _____

UMG RECORDINGS, INC.

By: Sheryl L. Gold

Name: Sheryl L. Gold

Date: 18 May 2021

WARNER MUSIC INC.

By: _____

Name: _____

Date: _____

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By: _____

Name: _____

Date: _____

NATIONAL MUSIC PUBLISHERS ASSOCIATION, INC.

By: _____

Name: _____

Date: _____

SONY MUSIC ENTERTAINMENT

By: _____

Name: _____

Date: _____

UMG RECORDINGS, INC.

By: _____

Name: _____

Date: _____

WARNER MUSIC INC.

By: DocuSigned by: _____
7DAF503BED9B482...

Name: Paul Robinson

Date: 5/17/2021

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By: _____

Name: _____

Date: _____

NATIONAL MUSIC PUBLISHERS ASSOCIATION, INC.

By: _____

Name: _____

Date: _____

SONY MUSIC ENTERTAINMENT

By: _____

Name: _____

Date: _____

UMG RECORDINGS, INC.

By: _____

Name: _____

Date: _____

WARNER MUSIC INC.

By: _____

Name: _____

Date: _____

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By: _____

Name: KENNETH L. DOROSHOW

Date: 5/24/21

NATIONAL MUSIC PUBLISHERS ASSOCIATION, INC.

By: _____

Name: _____

Date: _____

SONY MUSIC ENTERTAINMENT

By: _____

Name: _____

Date: _____

UMG RECORDINGS, INC.

By: _____

Name: _____

Date: _____

WARNER MUSIC INC.

By: _____

Name: _____

Date: _____

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

By: _____

Name: _____

Date: _____

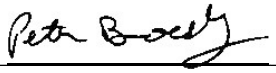
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

By: _____

Name: Danielle M. Aguirre

Date: May 24 2021

SONY MUSIC PUBLISHING

By: 

Name: Peter Brodsky

Date: May 20, 2021

UNIVERSAL MUSIC PUBLISHING GROUP

By: _____

Name: _____

Date: _____

WARNER CHAPPELL MUSIC, INC.

By: _____

Name: _____

Date: _____

ABKCO MUSIC, INC.

By: _____

Name: _____

Date: _____

BMG RIGHTS MANAGEMENT (US) LLC

By: _____

Name: _____

Date: _____

SONY MUSIC PUBLISHING

By: _____

Name: _____

Date: _____

UNIVERSAL MUSIC PUBLISHING GROUP

By: David Kokakis

Name: David Kokakis

Date: 21 May 2021

WARNER CHAPPELL MUSIC, INC.

By: _____

Name: _____

Date: _____

ABKCO MUSIC, INC.

By: _____

Name: _____

Date: _____

BMG RIGHTS MANAGEMENT (US)

By: _____

Name: _____

Date: _____

SONY MUSIC PUBLISHING

By: _____

Name: _____

Date: _____

UNIVERSAL MUSIC PUBLISHING GROUP

By: _____

Name: _____

Date: _____

WARNER CHAPPELL MUSIC, INC.

By: DocuSigned by: 2613C5358C50437...

Name: scott mcdowell

Date: 5/17/2021

ABKCO MUSIC, INC.

By: Jody Klein (Jun 3, 2021 14:45 EDT)

Name: Jody Klerin William Pittenger

Date: June 3rd 2021 June 3, 2021

BMG RIGHTS MANAGEMENT (US) LLC

By: _____

Name: _____

Date: _____

SONY MUSIC PUBLISHING

By: _____

Name: Peter Brodsky

Date: May 20, 2021

UNIVERSAL MUSIC PUBLISHING GROUP

By: _____

Name: _____

Date: _____

WARNER CHAPPELL MUSIC, INC.

By: _____

Name: _____

Date: _____

ABKCO MUSIC, INC.

By: _____

Name: _____

Date: _____

BMG RIGHTS MANAGEMENT (US) LLC

By: _____

Name: Keith C. Hauprich

Date: June 1, 2021

BMG RIGHTS MANAGEMENT (US) LLC

By: _____

Name: Jeff Brabec

Date: June 1, 2021

BIG DEAL MUSIC, LLC/HIPGNOSIS SONGS GROUP, LLC

By: DocuSigned by: Kenny MacPherson B3AC47CFF6D4420...

Name: Kenny MacPherson

Date: 6/1/2021

BIG MACHINE MUSIC, LLC

By: _____

Name: _____

Date: _____

CARLIN AMERICA, INC.

By: _____

Name: _____

Date: _____

CONCORD MUSIC PUBLISHING, LLC

By: _____

Name: _____

Date: _____

DOWNTOWN MUSIC PUBLISHING LLC

By: _____

Name: _____

Date: _____

BIG DEAL MUSIC, LLC/HIPGNOSIS SONGS GROUP, LLC

By: _____

Name: _____

Date: _____

BIG MACHINE MUSIC, LLC

By: DocuSigned by: Mike Molinar 22773BC1BAB0452...

Name: Mike Molinar

Date: June 1, 2021

CARLIN AMERICA, INC.

By: _____

Name: _____

Date: _____

CONCORD MUSIC PUBLISHING, LLC

By: _____

Name: _____

Date: _____

DOWNTOWN MUSIC PUBLISHING LLC

By: _____

Name: _____

Date: _____

BIG DEAL MUSIC, LLC/HIPGNOSIS SONGS GROUP, LLC

By: _____

Name: _____

Date: _____

BIG MACHINE MUSIC, LLC

By: _____

Name: _____

Date: _____

[redacted] Bienstock Empire, Inc.

By: _____

Name: CAROLINE BIENSTOCK

Date: 6/2/2021

CONCORD MUSIC PUBLISHING, LLC

By: _____

Name: _____

Date: _____

DOWNTOWN MUSIC PUBLISHING LLC

By: _____

Name: _____

Date: _____

BIG DEAL MUSIC, LLC/HIPGNOSIS SONGS GROUP, LLC

By: _____

Name: _____

Date: _____

BIG MACHINE MUSIC, LLC

By: _____

Name: _____

Date: _____

CARLIN AMERICA, INC.

By: _____

Name: _____

Date: _____

CONCORD MUSIC PUBLISHING, LLC

By: DocuSigned by: Jim Selby 0ACF71C401B04F4...

Name: Jim Selby

Date: 6/1/2021

DOWNTOWN MUSIC PUBLISHING LLC

By: _____

Name: _____

Date: _____

BIG DEAL MUSIC, LLC/HIPGNOSIS SONGS GROUP, LLC

By: _____

Name: _____

Date: _____

BIG MACHINE MUSIC, LLC

By: _____

Name: _____

Date: _____

CARLIN AMERICA, INC.

By: _____

Name: _____

Date: _____

CONCORD MUSIC PUBLISHING, LLC

By: _____

Name: _____

Date: _____

DOWNTOWN MUSIC PUBLISHING LLC

By: _____

Name: Peter Rosenthal

Date: 06 / 03 / 2021

KOBALT MUSIC PUBLISHING AMERICA, INC.

By: _____

Name: Jim ARNAY

Date: JUNE 1, 2021

LEEDS MUSIC

By: _____

Name: _____

Date: _____

MAYIMBA MUSIC

By: _____

Name: _____

Date: _____

PEERMUSIC III, LTD.

By: _____

Name: _____

Date: _____

RESERVOIR MEDIA MANAGEMENT, INC.

By: _____

Name: _____

Date: _____

KOBALT MUSIC PUBLISHING AMERICA, INC.

By: _____

Name: _____

Date: _____

LEEDS MUSIC

By: Lou Leeds Levy, Jr.

Name: Lou Leeds Levy, Jr.

Date: 06/02/2021

MAYIMBA MUSIC

By: _____

Name: _____

Date: _____

PEERMUSIC III, LTD.

By: _____

Name: _____

Date: _____

RESERVOIR MEDIA MANAGEMENT, INC.

By: _____

Name: _____

Date: _____

KOBALT MUSIC PUBLISHING AMERICA, INC.

By: _____

Name: _____

Date: _____

LEEDS MUSIC

By: _____

Name: _____

Date: _____

MAYIMBA MUSIC

By: Marti Cuevas

Name: Marti Cuevas

Date: 6/1/2021

PEERMUSIC III, LTD.

By: _____

Name: _____

Date: _____

RESERVOIR MEDIA MANAGEMENT, INC.

By: _____

Name: _____

Date: _____

KOBALT MUSIC PUBLISHING AMERICA, INC.

By: _____

Name: _____

Date: _____

LEEDS MUSIC

By: _____

Name: _____

Date: _____

MAYIMBA MUSIC

By: _____

Name: _____

Date: _____

PEERMUSIC III, LTD.

By: Timothy A Cohan

Name: Timothy A. Cohan

Date: 6/7/21

RESERVOIR MEDIA MANAGEMENT, INC.

By: _____

Name: _____

Date: _____

KOBALT MUSIC PUBLISHING AMERICA, INC.

By: _____

Name: _____

Date: _____

LEEDS MUSIC

By: _____

Name: _____

Date: _____

MAYIMBA MUSIC

By: _____

Name: _____

Date: _____

PEERMUSIC III, LTD.

By: _____

Name: _____

Date: _____

RESERVOIR MEDIA MANAGEMENT, INC.

By: _____

Name: Rell Lafargue

Date: 6/1/2021

THE RICHMOND ORGANIZATION

By: IRWIN ROBINSON
IRWIN ROBINSON (Jun 2, 2021 18:33 EDT)

Name: IRWIN ROBINSON

Date: Jun 2, 2021

ROUND HILL MUSIC, LP

By: _____

Name: _____

Date: _____

WALT DISNEY MUSIC COMPANY &
WONDERLAND MUSIC COMPANY, INC.

By: _____

Name: _____

Date: _____

THE RICHMOND ORGANIZATION

By: _____

Name: _____

Date: _____

ROUND HILL MUSIC LP

DocuSigned by:
Erich C. Carey
By: _____
E8AFDC7440AC48A...

Name: Erich C. Carey

Date: 6/4/2021

WALT DISNEY MUSIC COMPANY &
WONDERLAND MUSIC COMPANY, INC.

By: _____

Name: _____

Date: _____

THE RICHMOND ORGANIZATION

By: _____

Name: _____

Date: _____

ROUND HILL MUSIC, LP

By: _____

Name: _____

Date: _____

WALT DISNEY MUSIC COMPANY &
WONDERLAND MUSIC COMPANY, INC.

By: _____

Name: Bernardo Silva

Date: June 7, 2021

EXHIBIT A

SCHEDULE

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

EXHIBIT A
MOU4 TIMELINE

MOU4 Section	MOU1 Section (unless otherwise noted)	Date	Action	Responsible Party
Execution and Initial Implementation				
1	n/a	May 2021	MOU4 signed	Parties
4.2	4.1, 5.2	June 30, 2022	NMPA to have appointed Group 6 Administrator	NMPA
5.2		June 30, 2022	Target date for completion of discussions of improvements to licensing practices	Initial Signatories
3.2, 3.3	4.15, 5.6	~June 30, 2022	NMPA provides RIAA with proposed opt-in materials for Group 6	NMPA
3.2	4.15, 5.6	July 1, 2022	Opt-in process for Group 6 begins	NMPA/Administrator
3.2	4.15	~July 10, 2022 (NMPA's delivery + 10 days)	RIAA returns any comments on proposed opt-in materials	RIAA
3.2, 3.3	4.15, 5.6	December 31, 2022	Target close of opt-in period as to all Publishers; Publishers must provide releases	NMPA/Administrator, Participating Publishers
1		December 31, 2022	Expected End Date for MOU3	n/a

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

MOU4 Section	MOU1 Section (unless otherwise noted)	Date	Action	Responsible Party
Ordinary-Course Product Clearance and Distribution				
4.1, 4.3, 5.1	6.1	Beginning January 1, 2023	Beginning of Group 6-A distribution window; Participating Record Companies make good faith, reasonable efforts to clear Group 6-A Product	Participating Record Companies
	4.15	January 31, 2023	Administrator to provide Participating Record Companies with a list of Participating Publishers (in form of Excel spreadsheet) and copies of Opt-In Forms	Administrator
	7.5.1	February 15, 2023	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
	6.2 of MOU 2	March 1, 2023	RIAA to update aggregated information concerning royalty examinations under Pass-Through Arrangements	RIAA and Participating Record Companies
	7.5.1	August 15, 2023	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

MOU4 Section	MOU1 Section (unless otherwise noted)	Date	Action	Responsible Party
	7.5.1	February 15, 2024	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
	6.2 of MOU 2	March 1, 2024	RIAA to update aggregated information concerning royalty examinations under Pass-Through Arrangements	RIAA and Participating Record Companies
	7.5.1	August 15, 2024	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
4.1, 4.3, 5.1	6.1	Beginning January 1, 2025	Beginning of Group 6-B distribution window; Participating Record Companies make good faith, reasonable efforts to clear Group 6-B Product	Participating Record Companies
	7.5.1	February 15, 2025	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

	6.2 of MOU 2	March 1, 2025	RIAA to update aggregated information concerning royalty examinations under Pass-Through Arrangements	RIAA and Participating Record Companies
Group 6-A Bulk Distribution				
4.4	4.7, 5.4	June 30, 2025	Each Participating Record Company submits to Administrator its Publisher Payment Data for Group 6-A (data to cover payments made 2023-2024)	Participating Record Companies
	7.5.1	August 15, 2025	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
	7.5.1	February 15, 2026	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
	6.2 of MOU 2	March 1, 2026	RIAA to update aggregated information concerning royalty examinations under Pass-Through Arrangements	RIAA and Participating Record Companies
	7.5.1	August 15, 2026	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

3.2	4.15, 5.6	Late 2026	Administrator to conduct further opt-in process to enroll additional Participating Publishers for Group 6-A (and subsequent) bulk distributions, and at its conclusion supply Participating Record Companies with an updated list of Participating Publishers (in form of Excel spreadsheet) and copies of Opt-In Forms	Administrator
4.1		December 31, 2026	Group 6-A Cut-off Date	n/a
4.1		December 31, 2026	Deadline for Participating Publishers to provide ownership and split information for musical works used in Group 6-A Products for which payment will be made directly rather than through the initial bulk distribution	Participating Publishers
	7.5.1	February 15, 2027	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
	6.2 of MOU 2	March 1, 2027	RIAA to update aggregated information concerning royalty examinations under Pass-Through Arrangements	RIAA and Participating Record Companies

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

4.6	4.9, 5.5	April 1, 2027	Each Participating Record Company to provide CFO letter for Aggregate P&U Royalties and Group 6-A P&U Royalties to Administrator	Participating Record Companies
4.1, 4.5, 4.7	4.18, 4.19, 5.7	After April 1, 2027	Administrator will calculate and notify each Participating Record Company of its Group 6-A payment amount	Administrator
4.7	4.19	May 1, 2027 (or within 30 days after receiving notice from the Administrator, if later)	Participating Record Companies pay Administrator their Group 6-A payment amounts	Participating Record Companies
4.8	4.20, 5.9	After May 1, 2027, as described in proposed opt-in materials	Administrator distributes Group 6-A fund	Administrator
	7.5.1	August 15, 2027	True-up of any remaining advances for Pass-Through Arrangements	Participating Record Companies and Participating Publishers
Preamble		December 31, 2027	Approximate End Date for MOU4	n/a

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

Group 6-B Bulk Distribution				
4.4	4.7, 5.4	June 30, 2028	Each Participating Record Company submits to Administrator its Publisher Payment Data for Group 6-B (data to cover payments made 2025-2027)	Participating Record Companies
3.2	4.15, 5.6	Late 2029	Administrator to conduct further opt-in process to enroll additional Participating Publishers for Group 6-B bulk distribution, and at its conclusion supply Participating Record Companies with an updated list of Participating Publishers (in form of Excel spreadsheet) and copies of Opt-In Forms	Administrator
4.1		December 31, 2029	Group 6-B Cut-off Date	n/a
4.1		December 31, 2029	Deadline for Participating Publishers to provide ownership and split information for musical works used in Group 6-B Products for which payment will be made directly rather than through the initial bulk distribution	Participating Publishers
4.6	4.9, 5.5	April 1, 2030	Each Participating Record Company to provide CFO letter for Aggregate	Participating Record Companies

NOTE: THIS IS A SUMMARY DOCUMENT THAT DOES NOT FULLY DESCRIBE ALL OBLIGATIONS OF EVERY PARTY

MOU4 TIMELINE

			P&U Royalties and Group 6-B P&U Royalties to Administrator	
4.1, 4.5, 4.7	4.18, 4.19, 5.7	After April 1, 2030	Administrator will calculate and notify each Participating Record Company of its Group 6-B payment amount	Administrator
4.7	4.19	May 1, 2030 (or within 30 days after receiving notice from the Administrator, if later)	Participating Record Companies pay Administrator their Group 6-B payment amounts	Participating Record Companies
4.8	4.20, 5.9	After May 1, 2030, as described in proposed opt-in materials	Administrator distributes Group 6-B fund	Administrator

EXHIBIT B

37 C.F.R. Part 385 as in Effect Prior to *Phonorecords III*

PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

Subpart A—Physical Phonorecord Deliveries, Permanent Digital Downloads and Ringtones

§385.1 General.
(a) *Scope.* This subpart establishes rates and terms of royalty payments for making and distributing phonorecords, including by means of digital phonorecord deliveries, in accordance with the provisions of 17 U.S.C. 115.
(b) *Legal compliance.* Licensees relying upon the compulsory license set forth in 17 U.S.C. 115 shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations.
(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this subpart to use of musical works within the scope of such agreements.

§385.2 Definitions.
For purposes of this subpart, the following definitions apply:
Copyright owners are nondramatic musical work copyright owners who are entitled to royalty payments made under this subpart pursuant to the compulsory license under 17 U.S.C. 115.
Digital phonorecord delivery means a digital phonorecord delivery as defined in 17 U.S.C. 115(d).
Licensee is a person or entity that has obtained a compulsory license under 17 U.S.C. 115, and the implementing regulations, to make and distribute phonorecords of a nondramatic musical work, including by means of a digital phonorecord delivery.
Permanent digital download means a digital phonorecord delivery that is distributed in the form of a download that may be retained and played on a permanent basis.

Ringtone means a phonorecord of a partial musical work distributed as a digital phonorecord delivery in a format to be made resident on a telecommunications device for use to announce the reception of an incoming telephone call or other communication or message or to alert the receiver to the fact that there is a communication or message.

§385.3 Royalty rates for making and distributing phonorecords.
(a) *Physical phonorecord deliveries and permanent digital downloads.* For every physical phonorecord and permanent digital download made and distributed, the royalty rate payable for each work embodied in such phonorecord shall be either 9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.
(b) *Ringtones.* For every ringtone made and distributed, the royalty rate payable for each work embodied therein shall be 24 cents.

§385.4 Late payments.
A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received by the Copyright Owner after the due date set forth in §201.19(e)(7)(i) of this title. Late fees shall accrue from the due date until payment is received by the Copyright Owner.

Subpart B—Interactive Streaming and Limited Downloads

§385.10 General.
(a) *Scope.* This subpart establishes rates and terms of royalty payments for interactive streams and limited downloads of musical works by subscription and nonsubscription digital music services in accordance with the provisions of 17 U.S.C. 115.
(b) *Legal compliance.* A licensee that, pursuant to 17 U.S.C. 115, makes or authorizes interactive streams or limited downloads of musical works through subscription or nonsubscription digital music services shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations, with respect to such musical works and uses licensed pursuant to 17 U.S.C. 115.
(c) *Interpretation.* This subpart is intended only to set rates and terms for situations in which the exclusive rights of a copyright owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this subpart nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.

§385.11 Definitions.
For purposes of this subpart, the following definitions shall apply:
Affiliate means an entity controlling, controlled by, or under common control with another entity, except that an affiliate of a record company shall not include a copyright owner of musical works to the extent it is engaging in business as to musical works.
Applicable consideration means anything of value given for the identified rights to undertake the licensed activity, including, without limitation, ownership equity, monetary advances, barter or any other monetary and/or nonmonetary consideration, whether such consideration is conveyed via a single agreement, multiple agreements and/or agreements that do not themselves authorize the licensed activity but nevertheless provide consideration for the identified rights to undertake the licensed activity, and including any such value given to an affiliate of a record company for such rights to undertake the licensed activity. For the avoidance of doubt, value given to a copyright owner of musical works that is controlling, controlled by, or under common control with a record company for rights to undertake the licensed activity shall not be considered value given to the record company. Notwithstanding the foregoing, applicable consideration shall not include in-kind promotional consideration given to a record company (or affiliate thereof) that is used to promote the sale or paid use of sound recordings embodying musical works or the paid use of music services through which sound recordings embodying musical works are available where such in-kind promotional consideration is given in connection with a use that qualifies for licensing under 17 U.S.C. 115.
GAAP means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board,

in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as "GAAP" for purposes of this subpart.
Interactive stream means a stream of a sound recording of a musical work, where the performance of the sound recording by means of the stream is not exempt under 17 U.S.C. 114(d)(1) and does not in itself or as a result of a program in which it is included qualify for statutory licensing under 17 U.S.C. 114(d)(2).
Licensee means a person that has obtained a compulsory license under 17 U.S.C. 115 and its implementing regulations.
Licensed activity means interactive streams or limited downloads of musical works, as applicable.
Limited download means a digital transmission of a sound recording of a musical work to an end user, other than a stream, that results in a specifically identifiable reproduction of that sound recording that is only accessible for listening for—
(1) An amount of time not to exceed 1 month from the time of the transmission (unless the service provider, in lieu of retransmitting the same sound recording as another limited download, separately and upon specific request of the end user made through a live network connection, reauthorizes use for another time period not to exceed 1 month), or in the case of a subscription transmission, a period of time following the end of the applicable subscription no longer than a subscription renewal period or 3 months, whichever is shorter; or
(2) A specified number of times not to exceed 12 (unless the service provider, in lieu of retransmitting the same sound recording as another limited download, separately and upon specific request of the end user made through a live network connection, reauthorizes use of another series of 12 or fewer plays), or in the case of a subscription transmission, 12 times after the end of the applicable subscription.
(3) A limited download is a general digital phonorecord delivery under 17 U.S.C. 115(c)(3)(C) and (D).
Offering means a service provider's offering of licensed activity that is subject to a particular rate set forth in §385.13(a) (e.g., a particular subscription plan available through the service provider).
Promotional royalty rate means the statutory royalty rate of zero in the case of certain promotional interactive streams and certain promotional limited downloads, as provided in §385.14.
Record company means a person or entity that
(1) Is a copyright owner of a sound recording of a musical work;
(2) In the case of a sound recording of a musical work fixed before February 15, 1972, has rights to the sound recording, under the common law or statutes of any State, that are equivalent to the rights of a copyright owner of a sound recording of a musical work under title 17, United States Code;
(3) Is an exclusive licensee of the rights to reproduce and distribute a sound recording of a musical work; or
(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of the copyright owner of the sound recording.
Relevant page means a page (including a Web page, screen or display) from which licensed activity offered by a service provider is directly available to end users, but only where the offering of licensed activity and content that directly relates to the offering of licensed activity (e.g., an image of the artist or artwork closely associated with such offering, artist or album information, reviews of such offering, credits and music player controls) comprises 75% or more of the space on that page, excluding any space occupied by advertising. A licensed activity is directly available to end users from a page if sound recordings of musical works can be accessed by end users for licensed activity from such page (in most cases this will be the page where the limited download or interactive stream takes place).
Service provider means that entity (which may or may not be the licensee) that, with respect to the licensed activity,
(1) Contracts with or has a direct relationship with end users in a case where a contract or relationship exists, or otherwise controls the content made available to end users;
(2) Is able to report fully on service revenue from the provision of the licensed activity to the public, and to the extent applicable, verify service revenue through an audit; and
(3) Is able to report fully on usage of musical works by the service, or procure such reporting, and to the extent applicable, verify usage through an audit.
Service revenue. (1) Subject to paragraphs (2) through (5) of the definition of "Service revenue," and subject to GAAP, *service revenue* shall mean the following:
(i) All revenue recognized by the service provider from end users from the provision of licensed activity;
(ii) All revenue recognized by the service provider by way of sponsorship and commissions as a result of the inclusion of third-party "in-stream" or "in-download" advertising as part of licensed activity (*i.e.*, advertising placed immediately at the start, end or during the actual delivery, by way of interactive streaming or limited downloads, as applicable, of a musical work); and
(iii) All revenue recognized by the service provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a relevant page of the service or on any page that directly follows such

relevant page leading up to and including the limited download or interactive streaming, as applicable, of a musical work; provided that, in the case where more than one service is actually available to end users from a relevant page, any advertising revenue shall be allocated between such services on the basis of the relative amounts of the page they occupy.
(2) In each of the cases identified in paragraph (1) of the definition of "Service revenue," such revenue shall, for the avoidance of doubt,
(i) Include any such revenue recognized by the service provider, or if not recognized by the service provider, by any associate, affiliate, agent or representative of such service provider in lieu of its being recognized by the service provider;
(ii) Include the value of any barter or other nonmonetary consideration;
(iii) Not be reduced by credit card commissions or similar payment process charges; and
(iv) Except as expressly set forth in this subpart, not be subject to any other deduction or set-off other than refunds to end users for licensed activity that they were unable to use due to technical faults in the licensed activity or other bona fide refunds or credits issued to end users in the ordinary course of business.
(3) In each of the cases identified in paragraph (1) of the definition of "Service revenue," such revenue shall, for the avoidance of doubt, exclude revenue derived solely in connection with services and activities other than licensed activity, provided that advertising or sponsorship revenue shall be treated as provided in paragraphs (2) and (4) of the definition of "Service revenue." By way of example, the following kinds of revenue shall be excluded:
(i) Revenue derived from non-music voice, content and text services;
(ii) Revenue derived from other non-music products and services (including search services, sponsored searches and click-through commissions); and
(iii) Revenue derived from music or music-related products and services that are not or do not include licensed activity.
(4) For purposes of paragraph (1) of the definition of "Service revenue," advertising or sponsorship revenue shall be reduced by the actual cost of obtaining such revenue, not to exceed 15%.
(5) Where the licensed activity is provided to end users as part of the same transaction with one or more other products or services that are not a music service engaged in licensed activity, then the revenue deemed to be recognized from end users for the service for the purpose of the definition in paragraph (1) of the definition of "Service revenue" shall be the revenue recognized from end users for the bundle less the standalone published price for end users for each of the other component(s) of the bundle; provided that, if there is no such standalone published price for a component of the bundle, then the average standalone published price for end users for the most closely comparable product or service in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used.
Stream means the digital transmission of a sound recording of a musical work to an end user—
(1) To allow the end user to listen to the sound recording, while maintaining a live network connection to the transmitting service, substantially at the time of transmission, except to the extent that the sound recording remains accessible for future listening from a streaming cache reproduction;
(2) Using technology that is designed such that the sound recording does not remain accessible for future listening, except to the extent that the sound recording remains accessible for future listening from a streaming cache reproduction; and
(3) That is also subject to licensing as a public performance of the musical work.
Streaming cache reproduction means a reproduction of a sound recording of a musical work made on a computer or other receiving device by a service solely for the purpose of permitting an end user who has previously received a stream of such sound recording to play such sound recording again from local storage on such computer or other device rather than by means of a transmission; provided that the user is only able to do so while maintaining a live network connection to the service, and such reproduction is encrypted or otherwise protected consistent with prevailing industry standards to prevent it from being played in any other manner or on any device other than the computer or other device on which it was originally made.
Subscription service means a digital music service for which end users are required to pay a fee to access the service for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether such payment is made for access to the service on a standalone basis or as part of a bundle with one or more other products or services, and including any use of such a service on a trial basis without charge as described in §385.14(b).

§385.12 Calculation of royalty payments in general.

(a) *Applicable royalty.* Licensees that make or authorize licensed activity pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section, subject to the minimum royalties and subscriber-based royalty floors for specific types of services provided in §385.13, except as provided for certain promotional uses in §385.14.

(b) *Rate calculation methodology.* Royalty payments for licensed activity shall be calculated as provided in paragraph (b) of this section. If a service includes different offerings, royalties must be separately calculated with respect to each such offering taking into consideration service revenue and expenses associated with such offering. Uses subject to the promotional royalty rate shall be excluded from the calculation of royalties due, as further described in this section and the following §385.13.

(1) *Step 1:* Calculate the All-In Royalty for the Offering. For each accounting period, the all-in royalty for each offering of the service provider is the greater of

(i) The applicable percentage of service revenue associated with the relevant offering as set forth in paragraph (c) of this section (excluding any service revenue derived solely from licensed activity uses subject to the promotional royalty rate), and

(ii) The minimum specified in §385.13 of the offering involved.

(2) *Step 2:* Subtract Applicable Performance Royalties. From the amount determined in step 1 in paragraph (b)(1) of this section, for each offering of the service provider, subtract the total amount of royalties for public performance of musical works that has been or will be expensed pursuant to public performance licenses in connection with uses of musical works through such offering during the accounting period that constitute licensed activity (other than licensed activity subject to the promotional royalty rate). Although this amount may be the total of the service's payments for that offering for the accounting period , it will be less than the total of such public performance payments if the service is also engaging in public performance of musical works that does not constitute licensed activity. In the case where the service is also engaging in the public performance of musical works that does not constitute licensed activity, the amount to be subtracted for public performance payments shall be the amount of such payments allocable to licensed activity uses (other than promotional royalty rate uses) through the relevant offering, as determined in relation to all uses of musical works for which the public performance payments are made for the accounting period. Such allocation shall be made on the basis of plays of musical works or, where per-play information is unavailable due to bona fide technical limitations as described in step 4 in paragraph (b)(4) of this section, using the same alternative methodology as provided in step 4.

(3) *Step 3:* Determine the Payable Royalty Pool. The payable royalty pool is the amount payable for the reproduction and distribution of all musical works used by the service provider by virtue of its licensed activity for a particular offering during the accounting period. This amount is the greater of

(i) The result determined in step 2 in paragraph (b)(2) of this section, and

(ii) The subscriber-based royalty floor resulting from the calculations described in §385.13.

(4) *Step 4:* Calculate the Per-Work Royalty Allocation for Each Relevant Work. This is the amount payable for the reproduction and distribution of each musical work used by the service provider by virtue of its licensed activity through a particular offering during the accounting period. To determine this amount, the result determined in step 3 in paragraph (b)(3) of this section must be allocated to each musical work used through the offering. The allocation shall be accomplished by dividing the payable royalty pool determined in step 3 for such offering by the total number of plays of all musical works through such offering during the accounting period (other than promotional royalty rate plays) to yield a per-play allocation, and multiplying that result by the number of plays of each musical work (other than promotional royalty rate plays) through the offering during the accounting period. For purposes of determining the per-work royalty allocation in all calculations under this step 4 only (*i.e.*, after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each play shall be counted as provided in paragraph (d) of this section. Notwithstanding the foregoing, if the service provider is not capable of tracking play information due to bona fide limitations of the available technology for services of that nature or of devices useable with the service, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used by the service provider for making royalty payment allocations for the use of individual sound recordings.

(c) *Percentage of service revenue.* The percentage of service revenue applicable under paragraph (b) of this section is 10.5%.

(d) *Overtime adjustment.* For purposes of the calculations in step 4 in paragraph (b)(4) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of plays as follows:

(1) 5:01 to 6:00 minutes—Each play = 1.2 plays

(2) 6:01 to 7:00 minutes—Each play = 1.4 plays

(3) 7:01 to 8:00 minutes—Each play = 1.6 plays
(4) 8:01 to 9:00 minutes—Each play = 1.8 plays
(5) 9:01 to 10:00 minutes—Each play = 2.0 plays
(6) For playing times of greater than 10 minutes, continue to add .2 for each additional minute or fraction thereof.
(e) *Accounting.* The calculations required by paragraph (b) of this section shall be made in good faith and on the basis of the best knowledge, information and belief of the licensee at the time payment is due, and subject to the additional accounting and certification requirements of 17 U.S.C. 115(c)(5) and §201.19 of this title. Without limitation, a licensee's statements of account shall set forth each step of its calculations with sufficient information to allow the copyright owner to assess the accuracy and manner in which the licensee determined the payable royalty pool and per-play allocations (including information sufficient to demonstrate whether and how a minimum royalty or subscriber-based royalty floor pursuant to §385.13 does or does not apply) and, for each offering reported, also indicate the type of licensed activity involved and the number of plays of each musical work (including an indication of any overtime adjustment applied) that is the basis of the per-work royalty allocation being paid.

§385.13 Minimum royalty rates and subscriber-based royalty floors for specific types of services.
(a) *In general.* The following minimum royalty rates and subscriber-based royalty floors shall apply to the following types of licensed activity:
(1) *Standalone non-portable subscription—streaming only.* Except as provided in paragraph (a)(4) of this section, in the case of a subscription service through which an end user can listen to sound recordings only in the form of interactive streams and only from a non-portable device to which such streams are originally transmitted while the device has a live network connection, the minimum for use in step 1 of §385.12(b)(1)(ii) is the lesser of subminimum II as described in paragraph (c) of this section for the accounting period and the aggregate amount of 50 cents per subscriber per month. The subscriber-based royalty floor for use in step 3 of §385.12(b)(3)(ii) is the aggregate amount of 15 cents per subscriber per month.
(2) *Standalone non-portable subscription—mixed.* Except as provided in paragraph (a)(4) of this section, in the case of a subscription service through which an end user can listen to sound recordings either in the form of interactive streams or limited downloads but only from a non-portable device to which such streams or downloads are originally transmitted, the minimum for use in step 1 of §385.12(b)(1)(ii) is the lesser of the subminimum I as described in paragraph (b) of this section for the accounting period and the aggregate amount of 50 cents per subscriber per month. The subscriber-based royalty floor for use in step 3 of §385.12(b)(3)(ii) is the aggregate amount of 30 cents per subscriber per month.
(3) *Standalone portable subscription service.* Except as provided in paragraph (a)(4) of this section, in the case of a subscription service through which an end user can listen to sound recordings in the form of interactive streams or limited downloads from a portable device, the minimum for use in step 1 of §385.12(b)(1)(ii) is the lesser of subminimum I as described in paragraph (b) of this section for the accounting period and the aggregate amount of 80 cents per subscriber per month. The subscriber-based royalty floor for use in step 3 of §385.12(b)(3)(ii) is the aggregate amount of 50 cents per subscriber per month.
(4) *Bundled subscription services.* In the case of a subscription service providing licensed activity that is made available to end users with one or more other products or services (including products or services subject to other subparts) as part of a single transaction without pricing for the subscription service providing licensed activity separate from the product(s) or service(s) with which it is made available (e.g., a case in which a user can buy a portable device and one-year access to a subscription service providing licensed activity for a single price), the minimum for use in step 1 of §385.12(b)(1)(ii) is subminimum I as described in paragraph (b) of this section for the accounting period. The subscriber-based royalty floor for use in step 3 of §385.12(b)(3)(ii) is the aggregate amount of 25 cents per month for each end user who has made at least one play of a licensed work during such month (each such end user to be considered an “active subscriber”).
(5) *Free nonsubscription/ad-supported services.* In the case of a service offering licensed activity free of any charge to the end user, the minimum for use in step 1 of §385.12(b)(1)(ii) is subminimum II described in paragraph (c) of this section for the accounting period. There is no subscriber-based royalty floor for use in step 3 of §385.12(b)(3)(ii).
(b) *Computation of subminimum I.* For purposes of paragraphs (a)(2), (3), and (4) of this section, subminimum I for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service provider during the accounting period—
(1) In cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, 17.36% of the total amount

expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.
(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, 21% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.
(c) *Computation of subminimum II.* For purposes of paragraphs (a)(1) and (5) of this section, subminimum II for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service provider during the accounting period—
(1) In cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams and limited downloads of a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, 18% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.
(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, 22% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.
(d) *Payments made by third parties.* If a record company providing sound recording rights to the service provider for a licensed activity—
(1) Recognizes revenue (in accordance with GAAP, and including for the avoidance of doubt all applicable consideration with respect to such rights for the accounting period, regardless of the form or timing of payment) from a person or entity other than the service provider providing the licensed activity and its affiliates, and
(2) Such revenue is received, in the context of the transactions involved, as applicable consideration for such rights,
(3) Then such revenue shall be added to the amounts expensed by the service provider solely for purposes of paragraphs(b)(1), (b)(2), (c)(1), or (c)(2) of this section, as applicable, if not already included in such expensed amounts. Where the service provider is the licensee, if the service provider provides the record company all information necessary for the record company to determine whether additional royalties are payable by the service provider hereunder as a result of revenue recognized from a person or entity other than the service provider as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service provider to calculate the additional royalties and indemnify the service provider for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.
(e) *Computation of subscriber-based royalty rates.* For purposes of paragraph (a) of this section, to determine the minimum or subscriber-based royalty floor, as applicable to any particular offering, the total number of subscriber-months for the accounting period, shall be calculated taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the promotional royalty rate as described in §385.14(b)(2), except that in the case of a bundled subscription service, subscriber-months shall instead be determined with respect to active subscribers as defined in paragraph (a)(4) of this section. The product of the total number of subscriber-months for the accounting period and the specified number of cents per subscriber (or active subscriber, as the case may be) shall be used as the subscriber-based component of the minimum or subscriber-based royalty floor, as applicable, for the accounting period.

§385.14 Promotional royalty rate.
(a) *General provisions.* (1) This section establishes a royalty rate of zero in the case of certain promotional interactive streaming activities, and of certain promotional limited downloads offered in the context of a free trial period for a digital music subscription service under a license pursuant to 17 U.S.C. 115. Subject to the requirements of 17 U.S.C. 115 and the additional provisions of paragraphs (b) through (e) of this section, the promotional royalty

rate shall apply to a musical work when a record company transmits or authorizes the transmission of interactive streams or limited downloads of a sound recording that embodies such musical work, only if—
(i) The primary purpose of the record company in making or authorizing the interactive streams or limited downloads is to promote the sale or other paid use of sound recordings by the relevant artists, including such sound recording, through established retail channels or the paid use of one or more established retail music services through which the sound recording is available, and not to promote any other good or service;
(ii) Either—
(A) The sound recording (or a different version of the sound recording embodying the same musical work) is being lawfully distributed and offered to consumers through the established retail channels or services described in paragraph (a)(1)(i) of this section; or
(B) In the case of a sound recording of a musical work being prepared for commercial release but not yet released, the record company has a good faith intention of lawfully distributing and offering to consumers the sound recording (or a different version of the sound recording embodying the same musical work) through the established retail channels or services described in paragraph (a)(1)(i) of this section within 90 days after the commencement of the first promotional use authorized under this section (and in fact does so, unless it can demonstrate that notwithstanding its bona fide intention, it unexpectedly did not meet the scheduled release date);
(iii) In connection with authorizing the promotional interactive streams or limited downloads, the record company has obtained from the service provider it authorizes a written representation that—
(A) In the case of a promotional use other than interactive streaming subject to paragraph (d) of this section, the service provider agrees to maintain for a period of no less than 5 years from the conclusion of the promotional activity complete and accurate records of the relevant authorization and dates on which the promotion was conducted, and identifying each sound recording of a musical work made available through the promotion, the licensed activity involved, and the number of plays of such recording;
(B) The service provider is in all material respects operating with appropriate license authority with respect to the musical works it is using for promotional and other purposes; and
(C) The representation is signed by a person authorized to make the representation on behalf of the service provider;
(iv) Upon receipt by the record company of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular service is in a material manner operating without appropriate license authority from such copyright owner, the record company shall within 5 business days withdraw by written notice its authorization of such uses of such copyright owner's musical works under the promotional royalty rate by that service;
(v) The interactive streams or limited downloads are offered free of any charge to the end user and, except in the case of interactive streaming subject to paragraph (d) of this section in the case of a free trial period for a digital music subscription service, no more than 5 sound recordings at a time are streamed in response to any individual request of an end user;
(vi) The interactive streams and limited downloads are offered in a manner such that the user is at the same time (e.g., on the same Web page) presented with a purchase opportunity for the relevant sound recording or an opportunity to subscribe to a paid service offering the sound recording, or a link to such a purchase or subscription opportunity, except—
(A) In the case of interactive streaming of a sound recording being prepared for commercial release but not yet released, certain mobile applications or other circumstances in which the foregoing is impracticable in view of the current state of the relevant technology; and
(B) In the case of a free trial period for a digital music subscription service, if end users are periodically offered an opportunity to subscribe to the service during such free trial period; and
(vii) The interactive streams and limited downloads are not provided in a manner that is likely to cause mistake, to confuse or to deceive, reasonable end users as to the endorsement or association of the author of the musical work with any product, service or activity other than the sale or paid use of sound recordings or paid use of a music service through which sound recordings are available. Without limiting the foregoing, upon receipt of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular use of such work under this section violates the limitation set forth in this paragraph (a)(1)(vii), the record company shall promptly cease such use of that work, and within 5 business days withdraw by written notice its authorization of such use by all relevant third parties it has authorized under this section.
(2) To rely upon the promotional royalty rate, a record company making or authorizing interactive streams or limited downloads shall keep complete and accurate contemporaneous written records of such uses, including the sound recordings and musical works involved, the artists, the release dates of the sound recordings, a brief statement of the promotional activities authorized, the identity of the service or services where each promotion is authorized

(including the Internet address if applicable), the beginning and end date of each period of promotional activity authorized, and the representation required by paragraph (a)(1)(iii) of this section; provided that, in the case of trial subscription uses, such records shall instead consist of the contractual terms that bear upon promotional uses by the particular digital music subscription services it authorizes; and further provided that, if the record company itself is conducting the promotion, it shall also maintain any additional records described in paragraph (a)(1)(iii)(A) of this section. The records required by this paragraph (a)(2) shall be maintained for no less time than the record company maintains records of usage of royalty-bearing uses involving the same type of licensed activity in the ordinary course of business, but in no event for less than 5 years from the conclusion of the promotional activity to which they pertain. If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under this paragraph (a)(2) with respect to a specific promotion or relating to a particular sound recording of a musical work, the record company shall provide complete and accurate documentation within 10 business days, except for any information required under paragraph (a)(1)(iii)(A) of this section, which shall be provided within 20 business days, and provided that if the copyright owner or agent requests information concerning a large volume of promotions or sound recordings, the record company shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the record company does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the promotional royalty rate and the record company (but not any third-party service it has authorized) shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(3) If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under paragraph (a)(1)(iii)(A) of this section by a service authorized by a record company with respect to a specific promotion, the service provider shall provide complete and accurate documentation within 20 business days, provided that if the copyright owner or agent requests information concerning a large volume of promotions or sound recordings, the service provider shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the service provider does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the promotional royalty rate and the service provider (but not the record company) will be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(4) The promotional royalty rate is exclusively for audio-only interactive streaming and limited downloads of musical works subject to licensing under 17 U.S.C. 115. The promotional royalty rate does not apply to any other use under 17 U.S.C. 115; nor does it apply to public performances, audiovisual works, lyrics or other uses outside the scope of 17 U.S.C. 115. Without limitation, uses subject to licensing under 17 U.S.C. 115 that do not qualify for the promotional royalty rate (including without limitation interactive streaming or limited downloads of a musical work beyond the time limitations applicable to the promotional royalty rate) require payment of applicable royalties. This section is based on an understanding of industry practices and market conditions at the time of its development, among other things. The terms of this section shall be subject to de novo review and consideration (or elimination altogether) in future proceedings before the Copyright Royalty Judges. Nothing in this section shall be interpreted or construed in such a manner as to nullify or diminish any limitation, requirement or obligation of 17 U.S.C. 115 or other protection for musical works afforded by the Copyright Act, 17 U.S.C. 101 *et seq.*

(b) *Interactive streaming and limited downloads of full-length musical works through third-party services.* In addition to those of paragraph (a) of this section, the provisions of this paragraph (b) apply to interactive streaming, and limited downloads (in the context of a free trial period for a digital music subscription service), authorized by record companies under the promotional royalty rate through third-party services (including Web sites) that is not subject to paragraphs (c) or (d) of this section. Such interactive streams and limited downloads may be made or authorized by a record company under the promotional royalty rate only if—

(1) No applicable consideration for making or authorizing the relevant interactive streams or limited downloads is received by the record company, any of its affiliates, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration given to a record company (or affiliate thereof) that is used to promote the sale or paid use of sound recordings or the paid use of music services through which sound recordings are available;

(2) In the case of interactive streaming and limited downloads offered in the context of a free trial period for a digital music subscription service, the free trial period does not exceed 30 consecutive days per subscriber per two-year period; and

(3) In contexts other than a free trial period for a digital music subscription service, interactive streaming subject to paragraph (b) of this section of a particular sound recording is authorized by the record company on no more than 60 days total for all services (*i.e.*, interactive streaming under paragraph (b) of this section of a particular sound recording may be authorized on no more than a total of 60 days, which need not be consecutive, and on any one such day, interactive streams may be offered on one or more services); provided, however, that an additional 60 days shall be available each time the sound recording is re-released by the record company in a remastered form or as a part of a compilation with a different set of sound recordings than the original release or any prior compilation including such sound recording.
(4) In the event that a record company authorizes promotional uses in excess of the time limitations of paragraph (b) of this section, the record company, and not the third-party service it has authorized, shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved. In the event that a third-party service exceeds the scope of any authorization by a record company, the service provider, and not the record company, shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.
(c) *Interactive streaming of full-length musical works through record company and artist services.* In addition to those of paragraph (a) of this section, the provisions of this paragraph (c) apply to interactive streaming conducted or authorized by record companies under the promotional royalty rate through a service (e.g., a Web site) directly owned or operated by the record company, or directly owned or operated by a recording artist under the authorization of the record company, and that is not subject to paragraph (d) of this section. For the avoidance of doubt and without limitation, an artist page or site on a third-party service (e.g., a social networking service) shall not be considered a service operated by the record company or artist. Such interactive streams may be made or authorized by a record company under the promotional royalty rate only if—
(1) The interactive streaming subject to this paragraph (c) of a particular sound recording is offered or authorized by the record company on no more than 90 days total for all services (*i.e.*, interactive streaming under this paragraph (c) of a particular sound recording may be authorized on no more than a total of 90 days, which need not be consecutive, and on any such day, interactive streams may be offered on one or more services operated by the record company or artist, subject to the provisions of paragraph (b)(2) of this section); provided, however, that an additional 90 days shall be available each time the sound recording is re-released by the record company in a remastered form or as part of a compilation with a different set of sound recordings than prior compilations that include that sound recording;
(2) In the case of interactive streaming through a service devoted to one featured artist, the interactive streams subject to this paragraph (c) of this section of a particular sound recording are made or authorized by the record company on no more than one official artist site per artist and are recordings of that artist; and
(3) In the case of interactive streaming through a service that is not limited to a single featured artist, all interactive streaming on such service (whether eligible for the promotional royalty rate or not) is limited to sound recordings of a single record company and its affiliates and the service would not reasonably be considered to be a meaningful substitute for a paid music service.
(d) *Interactive streaming of clips.* In addition to those in paragraph (a) of this section, the provisions of this paragraph (d) apply to interactive streaming conducted or authorized by record companies under the promotional royalty rate of segments of sound recordings of musical works with a playing time that does not exceed 90 seconds. Such interactive streams may be made or authorized by a record company under the promotional royalty rate without any of the temporal limitations set forth in paragraphs (b) and (c) of this section (but subject to the other conditions of paragraphs (b) and (c) of this section, as applicable). For clarity, this paragraph (d) is strictly limited to the uses described herein and shall not be construed as permitting the creation or use of an excerpt of a musical work in violation of 17 U.S.C. 106(2) or 115(a)(2) or any other right of a musical work owner.

[74 FR 4529, Jan. 26, 2009, as amended at 74 FR 6834, Feb. 11, 2009; 78 FR 67944, Nov. 13, 2013]

§385.15 [Reserved]

§385.16 Reproduction and distribution rights covered.
A compulsory license under 17 U.S.C. 115 extends to all reproduction and distribution rights that may be necessary for the provision of the licensed activity, solely for the purpose of providing such licensed activity (and no other purpose).

§385.17 Effect of rates.
In any future proceedings under 17 U.S.C. 115(c)(3)(C) and (D), the royalty rates payable for a compulsory license shall be established de novo.

Subpart C—Limited Offerings, Mixed Service Bundles, Music Bundles, Paid Locker Services and Purchased Content Locker Services

§385.20 General.
(a) *Scope.* This subpart establishes rates and terms of royalty payments for certain reproductions or distributions of musical works through limited offerings, mixed service bundles, music bundles, paid locker services and purchased content locker services provided in accordance with the provisions of 17 U.S.C. 115. For the avoidance of doubt, to the extent that product configurations for which rates are specified in subpart A of this part are included within licensed subpart C activity, as defined in §385.21, the rates specified in subpart A of this part shall not apply, except that in the case of a music bundle the compulsory licensee may elect to pay royalties for the music bundle pursuant to subpart C of this part or for the components of the bundle pursuant to subpart A of this part.
(b) *Legal compliance.* A licensee that, pursuant to 17 U.S.C. 115, makes or authorizes reproduction or distribution of musical works in limited offerings, mixed service bundles, music bundles, paid locker services or purchased content locker services shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations, with respect to such musical works and uses licensed pursuant to 17 U.S.C. 115.
(c) *Interpretation.* This subpart is intended only to set rates and terms for situations in which the exclusive rights of a copyright owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this subpart nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.

§385.21 Definitions.
For purposes of this subpart, the following definitions shall apply:
Affiliate shall have the meaning given in §385.11.
Applicable consideration shall have the meaning given in §385.11, except that for purposes of this subpart C, references in the definition of "Applicable consideration" in §385.11 to licensed activity shall mean licensed subpart C activity, as defined in this section.
Free trial royalty rate means the statutory royalty rate of zero in the case of certain free trial periods, as provided in §385.24.
GAAP shall have the meaning given in §385.11.
Interactive stream shall have the meaning given in §385.11.
Licensee shall have the meaning given in §385.11.
Licensed subpart C activity means, referring to subpart C of this part—
(1) In the case of a limited offering, the applicable interactive streams or limited downloads;
(2) In the case of a locker service, the applicable interactive streams, permanent digital downloads, restricted downloads or ringtones;
(3) In the case of a music bundle, the applicable reproduction or distribution of a physical phonorecord, permanent digital download or ringtone; and
(4) In the case of a mixed service bundle, the applicable—
(i) Permanent digital downloads;
(ii) Ringtones;
(iii) To the extent a limited offering is included in a mixed service bundle, interactive streams or limited downloads; or
(iv) To the extent a locker service is included in a mixed service bundle, interactive streams, permanent digital downloads, restricted downloads or ringtones.
Limited download shall have the meaning given in §385.11.
Limited offering means a subscription service providing interactive streams or limited downloads where—
(1) An end user is not provided the opportunity to listen to a particular sound recording chosen by the end user at a time chosen by the end user (i.e., the service does not provide interactive streams of individual recordings that are on-demand, and any limited downloads are rendered only as part of programs rather than as individual recordings that are on-demand); or

(2) The particular sound recordings available to the end user over a period of time are substantially limited relative to services in the marketplace providing access to a comprehensive catalog of recordings (e.g., a service limited to a particular genre, or permitting interactive streaming only from a monthly playlist consisting of a limited set of recordings).

Locker service means a service providing access to sound recordings of musical works in the form of interactive streams, permanent digital downloads, restricted downloads or ringtones, where the service has reasonably determined that phonorecords of the applicable sound recordings have been purchased by the end user or are otherwise in the possession of the end user prior to the end user's first request to access such sound recordings by means of the service. The term locker service does not extend to any part of a service otherwise meeting this definition as to which a license is not obtained for the applicable reproductions and distributions of musical works.

Mixed service bundle means an offering of one or more of permanent digital downloads, ringtones, locker services or limited offerings, together with one or more of non-music services (e.g., Internet access service, mobile phone service) or non-music products (e.g., a device such as a phone) of more than token value, that is provided to users as part of one transaction without pricing for the music services or music products separate from the whole offering.

Music bundle means an offering of two or more of physical phonorecords, permanent digital downloads or ringtones provided to users as part of one transaction (e.g., download plus ringtone, CD plus downloads). A music bundle must contain at least two different product configurations and cannot be combined with any other offering containing licensed activity under subpart B of this part or subpart C of this part.

(1) In the case of music bundles containing one or more physical phonorecords, the physical phonorecord component of the music bundle must be sold under a single catalog number, and the musical works embodied in the digital phonorecord delivery configurations in the music bundle must be the same as, or a subset of, the musical works embodied in the physical phonorecords; provided that when the music bundle contains a set of digital phonorecord deliveries sold by the same record company under substantially the same title as the physical phonorecord (e.g., a corresponding digital album), up to 5 sound recordings of musical works that are included in the stand-alone version of such set of digital phonorecord deliveries but are not included on the physical phonorecord may be included among the digital phonorecord deliveries in the music bundle. In addition, the seller must permanently part with possession of the physical phonorecord or phonorecords sold as part of the music bundle.

(2) In the case of music bundles composed solely of digital phonorecord deliveries, the number of digital phonorecord deliveries in either configuration cannot exceed 20, and the musical works embodied in each configuration in the music bundle must be the same as, or a subset of, the musical works embodied in the configuration containing the most musical works.

Paid locker service means a locker service that is a subscription service.

Permanent digital download shall have the meaning given in §385.2.

Purchased content locker service means a locker service made available to end-user purchasers of permanent digital downloads, ringtones or physical phonorecords at no incremental charge above the otherwise applicable purchase price of the permanent digital downloads, ringtones or physical phonorecords, with respect to the sound recordings embodied in permanent digital downloads or ringtones or physical phonorecords purchased from a qualifying seller as described in paragraph (1) of this definition of "Purchased content locker service," whereby the locker service enables the purchaser to engage in one or both of the qualifying activities identified in paragraph (2) of this definition of "Purchased content locker service." In addition, in the case of a locker service made available to end-user purchasers of physical phonorecords, the seller must permanently part with possession of the physical phonorecords.

(1) A qualifying seller for purposes of this definition of "purchased content locker service" is the same entity operating such locker service, one of its affiliates or predecessors, or—

(i) In the case of permanent digital downloads or ringtones, a seller having another legitimate connection to the locker service provider set forth in one or more written agreements (including that the locker service and permanent digital downloads or ringtones are offered through the same third party); or

(ii) In the case of physical phonorecords, a seller having an agreement with—

(A) The locker service provider whereby such parties establish an integrated offer that creates a consumer experience commensurate with having the same service both sell the physical phonorecord and offer the locker service; or

(B) A service provider that also has an agreement with the entity offering the locker service, where pursuant to those agreements the service provider has established an integrated offer that creates a consumer experience commensurate with having the same service both sell the physical phonorecord and offer the locker service.

(2) Qualifying activity for purposes of this definition of "purchased content locker service" is enabling the purchaser to—
(i) Receive one or more additional phonorecords of such purchased sound recordings of musical works in the form of permanent digital downloads or ringtones at the time of purchase, or
(ii) Subsequently access such purchased sound recordings of musical works in the form of interactive streams, additional permanent digital downloads, restricted downloads or ringtones.
Record company shall have the meaning given in §385.11.
Restricted download means a digital phonorecord delivery distributed in the form of a download that may not be retained and played on a permanent basis. The term restricted download includes a limited download.
Ringtone shall have the meaning given in §385.2.
Service provider shall have the meaning given in §385.11, except that for purposes of this subpart references in the definition of "Service provider" in §385.11 to licensed activity and service revenue shall mean licensed subpart C activity, as defined in this section, and subpart C service revenue, as defined in this section, respectively.
Subpart C offering means, referring to subpart C of this part, a service provider's offering of licensed subpart C activity, as defined in this section, that is subject to a particular rate set forth in §385.23(a) (e.g., a particular subscription plan available through the service provider).
Subpart C relevant page means, referring to subpart C of this part, a page (including a Web page, screen or display) from which licensed subpart C activity, as defined in this section, offered by a service provider is directly available to end users, but only where the offering of licensed subpart C activity, as defined in this section, and content that directly relates to the offering of licensed subpart C activity, as defined in this section, (e.g., an image of the artist or artwork closely associated with such offering, artist or album information, reviews of such offering, credits and music player controls) comprises 75% or more of the space on that page, excluding any space occupied by advertising. A licensed subpart C activity, as defined in this section, is directly available to end users from a page if sound recordings of musical works can be accessed by end users for licensed subpart C activity, as defined in this section, from such page (in most cases this will be the page where the transmission takes place).
Subpart C service revenue. (1) Subject to paragraphs (2) through (6) of the definition of "Subpart C service revenue," as defined in this section, and subject to GAAP, subpart C service revenue shall mean, referring to subpart C of this part, the following:
(i) All revenue recognized by the service provider from end users from the provision of licensed subpart C activity, as defined in this section;
(ii) All revenue recognized by the service provider by way of sponsorship and commissions as a result of the inclusion of third-party "in-stream" or "in-download" advertising as part of licensed subpart C activity, as defined in this section, (i.e., advertising placed immediately at the start, end or during the actual delivery, by way of transmissions of a musical work that constitute licensed subpart C activity, as defined in this section); and
(iii) All revenue recognized by the service provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a subpart C relevant page, as defined in this section, of the service or on any page that directly follows such subpart C relevant page, as defined in this section, leading up to and including the transmission of a musical work that constitutes licensed subpart C activity, as defined in this section; provided that, in the case where more than one service is actually available to end users from a subpart C relevant page, as defined in this section, any advertising revenue shall be allocated between such services on the basis of the relative amounts of the page they occupy.
(2) In each of the cases identified in paragraph (1) of the definition of "Subpart C service revenue," of this section such revenue shall, for the avoidance of doubt,
(i) Include any such revenue recognized by the service provider, or if not recognized by the service provider, by any associate, affiliate, agent or representative of such service provider in lieu of its being recognized by the service provider;
(ii) Include the value of any barter or other nonmonetary consideration;
(iii) Not be reduced by credit card commissions or similar payment process charges; and
(iv) Except as expressly set forth in this subpart, not be subject to any other deduction or set-off other than refunds to end users for licensed subpart C activity, as defined in this section, that they were unable to use due to technical faults in the licensed subpart C activity, as defined in this section, or other bona fide refunds or credits issued to end users in the ordinary course of business.
(3) In each of the cases identified in paragraph (1) of the definition of "Subpart C service revenue" of this section, such revenue shall, for the avoidance of doubt, exclude revenue derived solely in connection with services and activities other than licensed subpart C activity, as defined in this section, provided that advertising or sponsorship

revenue shall be treated as provided in paragraphs (2) and (4) of the definition of "Subpart C service revenue" of this section. By way of example, the following kinds of revenue shall be excluded:
(i) Revenue derived from non-music voice, content and text services;
(ii) Revenue derived from other non-music products and services (including search services, sponsored searches and click-through commissions);
(iii) Revenue generated from the sale of actual locker service storage space to the extent that such storage space is sold at a separate retail price;
(iv) In the case of a locker service, revenue derived from the sale of permanent digital downloads or ringtones; and
(v) Revenue derived from other music or music-related products and services that are not or do not include licensed subpart C activity, as defined in this section.
(4) For purposes of paragraph (1) of the definition of "Subpart C service revenue" of this section, advertising or sponsorship revenue shall be reduced by the actual cost of obtaining such revenue, not to exceed 15%.
(5) In the case of a mixed service bundle, the revenue deemed to be recognized from end users for the service for the purpose of the definition in paragraph (1) of the definition of "Subpart C service revenue" of this section shall be the greater of—
(i) The revenue recognized from end users for the mixed service bundle less the standalone published price for end users for each of the non-music product or non-music service components of the bundle; provided that, if there is no such standalone published price for a non-music component of the bundle, then the average standalone published price for end users for the most closely comparable non-music product or non-music service in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and
(ii) Either—
(A) In the case of a mixed service bundle that either has 750,000 subscribers or other registered users, or is reasonably expected to have 750,000 subscribers or other registered users within 1 year after commencement of the mixed service bundle, 40% of the standalone published price of the licensed music component of the bundle (i.e., the permanent digital downloads, ringtones, locker service or limited offering); provided that, if there is no such standalone published price for the licensed music component of the bundle, then the average standalone published price for end users for the most closely comparable licensed music component in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and further provided that in any case in which royalties were paid based on this paragraph due to a reasonable expectation of reaching 750,000 subscribers or other registered users within 1 year after commencement of the mixed service bundle and that does not actually happen, applicable payments shall, in the accounting period next following the end of such 1-year period, retroactively be adjusted as if paragraph (5)(ii)(B) of the definition of "Subpart C service revenue" of this section applied; or
(B) Otherwise, 50% of the standalone published price of the licensed music component of the bundle (i.e., the permanent digital downloads, ringtones, locker service or limited offering); provided that, if there is no such standalone published price for the licensed music component of the bundle, then the average standalone published price for end users for the most closely comparable licensed music component in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used.
(6) In the case of a music bundle containing a physical phonorecord, where the music bundle is distributed by a record company for resale and the record company is the compulsory licensee—
(i) Service revenue shall be 150% of the record company's wholesale revenue from the music bundle; and
(ii) The times at which distribution and revenue recognition are deemed to occur shall be in accordance with §201.19 of this title.
Subscription service means a digital music service for which end users are required to pay a fee to access the service for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether such payment is made for access to the service on a standalone basis or as part of a bundle with one or more other products or services, and including any use of such a service on a trial basis without charge as described in §385.24.

§385.22 Calculation of royalty payments in general.
(a) *Applicable royalty.* Licensees that make or authorize licensed subpart C activity, as defined in §385.21, pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section, subject to the royalty rates and subscriber-based royalty floors for specific types of services provided in §385.23, except as provided for certain free trial periods in §385.24.

(b) *Rate calculation methodology.* Royalty payments for licensed subpart C activity, as defined in §385.21, shall be calculated as provided in this paragraph (b). If a service provides different subpart C offerings, as defined in §385.21, royalties must be separately calculated with respect to each such subpart C offering, as defined in §385.21, taking into consideration service revenue and expenses associated with such offering. Uses subject to the free trial royalty rate shall be excluded from the calculation of royalties due, as further described in this section and §385.23.
(1) *Step 1:* Calculate the All-In Royalty for the Subpart C Offering, as Defined in §385.21. For each accounting period, the all-in royalty for each subpart C offering, as defined in §385.21, of the service provider is the greater of:
(i) The applicable percentage of subpart C service revenue, as defined in §385.21, associated with the relevant offering as set forth in §385.23(a) (excluding any subpart C service revenue, as defined in §385.21, derived solely from licensed subpart C activity, as defined in §385.21, uses subject to the free trial royalty rate); and
(ii) The minimum specified in §385.23(a) for the subpart C offering, as defined in §385.21, involved.
(2) *Step 2:* Subtract applicable performance royalties to determine the payable royalty pool, which is the amount payable for the reproduction and distribution of all musical works used by the service provider by virtue of its licensed subpart C activity, as defined in §385.21, for a particular subpart C offering, as defined in §385.21, during the accounting period. From the amount determined in step 1 in paragraph (b)(1) of this section, for each subpart C offering, as defined in §385.21, of the service provider, subtract the total amount of royalties for public performance of musical works that has been or will be expensed pursuant to public performance licenses in connection with uses of musical works through such subpart C offering, as defined in §385.21, during the accounting period that constitute licensed subpart C activity, as defined in §385.21, (other than licensed subpart C activity, as defined in §385.21, subject to the free trial royalty rate), or in connection with previewing of such subpart C offering, as defined in §385.21, during the accounting period. Although this amount may be the total of the payments with respect to the service for that subpart C offering, as defined in §385.21, for the accounting period, it will be less than the total of such public performance payments if the service is also engaging in public performance of musical works that does not constitute licensed subpart C activity, as defined in §385.21, or previewing of such licensed subpart C activity, as defined in §385.21. In the case where the service is also engaging in the public performance of musical works that does not constitute licensed subpart C activity, as defined in §385.21, the amount to be subtracted for public performance payments shall be the amount of such payments allocable to licensed subpart C activity, as defined in §385.21, uses (other than free trial royalty rate uses), and previewing of such uses, in connection with the relevant subpart C offering, as defined in §385.21, as determined in relation to all uses of musical works for which the public performance payments are made for the accounting period. Such allocation shall be made on the basis of plays of musical works or, where per-play information is unavailable due to bona fide technical limitations as described in step 3 in paragraph (b)(3) of this section, using the same alternative methodology as provided in step 3 in paragraph (b)(3) of this section.
(3) *Step 3:* Calculate the Per-Work Royalty Allocation for Each Relevant Work. This is the amount payable for the reproduction and distribution of each musical work used by the service provider by virtue of its licensed subpart C activity, as defined in §385.21, through a particular subpart C offering, as defined in §385.21, during the accounting period. To determine this amount, the result determined in step 2 in paragraph (b)(2) of this section must be allocated to each musical work used through the subpart C offering, as defined in §385.21. The allocation shall be accomplished as follows:
(i) In the case of limited offerings (but not limited offerings that are part of mixed service bundles), by dividing the payable royalty pool determined in step 2 in paragraph (b)(2) of this section for such offering by the total number of plays of all musical works through such offering during the accounting period (other than free trial royalty rate plays) to yield a per-play allocation, and multiplying that result by the number of plays of each musical work (other than free trial royalty rate plays) through the offering during the accounting period. For purposes of determining the per-work royalty allocation in all calculations under this step 3 only (i.e., after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each play shall be counted as provided in paragraph (c) of this section. Notwithstanding the foregoing, if the service provider is not capable of tracking play information due to bona fide limitations of the available technology for services of that nature or of devices usable with the service, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used by the service provider for making royalty payment allocations for the use of individual sound recordings.
(ii) In the case of mixed service bundles and locker services, by—
(A) Determining a constructive number of plays of all licensed musical works that is the sum of the total number of interactive streams of all licensed musical works made through such offering during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of all licensed musical works made through such offering during the accounting period as to which the service provider tracks

plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of all licensed musical works made through such offering during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads);
(B) Determining a constructive per-play allocation that is the payable royalty pool determined in step 2 of paragraph (b)(2) of this section for such offering divided by the constructive number of plays of all licensed musical works determined in paragraph (b)(3)(ii)(A) of this section;
(C) For each licensed musical work, determining a constructive number of plays of that musical work that is the sum of the total number of interactive streams of such licensed musical work made through such offering during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of such licensed musical work made through such offering during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of such licensed musical work made through such offering during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads); and
(D) For each licensed musical work, determining the per-work royalty allocation by multiplying the constructive per-play allocation determined in paragraph (b)(3)(ii)(B) of this section by the constructive number of plays of that musical work determined in paragraph (b)(3)(ii)(C) of this section.
(E) Notwithstanding the foregoing, if a service provider offers both a paid locker service and a purchased content locker service, and with respect to the purchased content locker service there is no subpart C service revenue, as defined in §385.21, and the applicable subminimum is zero dollars, then the service provider shall be permitted to include within the calculation of constructive plays under paragraphs (b)(3)(ii)(A) and (C) of this section for the paid locker service, the licensed subpart C activity, as defined in §385.21, made through the purchased content locker service (i.e., the total number of interactive streams of all licensed musical works made through the purchased content locker service during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of all licensed musical works made through the purchased content locker service during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of all licensed musical works made through the purchased content locker service during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads)); provided that the relevant licensed subpart C activity, as defined in §385.21, made through the purchased content locker service is similarly included within the play calculation for the paid locker service for the corresponding sound recording rights.
(iii) In the case of music bundles, by—
(A) Allocating the payable royalty pool determined in step 2 of paragraph (b)(2) of this section to separate pools for each type of product configuration included in the music bundle (e.g., CD, permanent digital download, ringtone) in accordance with the ratios that the standalone published prices of the products that are included in the music bundle bear to each other; provided that, if there is no such standalone published price for such a product, then the average standalone published price for end users for the most closely comparable product in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and
(B) Allocating the product configuration pools determined in paragraph (b)(3)(iii)(A) of this section to individual musical works by dividing each such pool by the total number of sound recordings of musical works included in products of that configuration in the music bundle.
(c) *Overtime adjustment.* For purposes of the calculations in step 3 of paragraph (b)(3)(i) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of plays as follows:
(1) 5:01 to 6:00 minutes—Each play = 1.2 plays
(2) 6:01 to 7:00 minutes—Each play = 1.4 plays
(3) 7:01 to 8:00 minutes—Each play = 1.6 plays
(4) 8:01 to 9:00 minutes—Each play = 1.8 plays
(5) 9:01 to 10:00 minutes—Each play = 2.0 plays
(6) For playing times of greater than 10 minutes, continue to add .2 plays for each additional minute or fraction thereof.

§385.23 Royalty rates and subscriber-based royalty floors for specific types of services.
(a) *In general.* The following royalty rates and subscriber-based royalty floors shall apply to the following types of licensed subpart C activity, as defined in §385.21:
(1) *Mixed service bundle.* In the case of a mixed service bundle, the percentage of subpart C service revenue, as defined in §385.21, applicable in step 1 of §385.22(b)(1)(i) is 11.35%. The minimum for use in step 1 of

§385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to §385.23(b)(1) is 17.36%, and the sound recording-only percentage applicable to §385.23(b)(2) is 21%.
(2) *Music bundle.* In the case of a music bundle, the percentage of subpart C service revenue, as defined in §385.21, applicable in step 1 of §385.22(b)(1)(i) is 11.35%. The minimum for use in step 1 of §385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to §385.23(b)(1) and (3) is 17.36%, and the sound recording-only percentage applicable to §385.23(b)(2) is 21%.
(3) *Limited offering.* In the case of a limited offering, the percentage of subpart C service revenue, as defined in §385.21, applicable in step 1 of §385.22(b)(1)(i) is 10.5%. The minimum for use in step 1 of §385.22(b)(1)(ii) is the greater of—
(i) The appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to §385.23(b)(1) is 17.36%, and the sound recording-only percentage applicable to §385.23(b)(2) is 21%; and
(ii) The aggregate amount of 18 cents per subscriber per month.
(4) *Paid locker service.* In the case of a paid locker service, the percentage of subpart C service revenue, as defined in §385.21, applicable in step 1 of §385.22(b)(1)(i) is 12%. The minimum for use in step 1 of §385.22(b)(1)(ii) is the greater of—
(i) The appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to §385.23(b)(1) is 17.11%, and the sound recording-only percentage applicable to §385.23(b)(2) is 20.65%; and
(ii) The aggregate amount of 17 cents per subscriber per month.
(5) *Purchased content locker service.* In the case of a purchased content locker service, the percentage of subpart C service revenue, as defined in §385.21, applicable in step 1 of §385.22(b)(1)(i) is 12%. For the avoidance of doubt, paragraph (1)(i) of the definition of "Subpart C service revenue," as defined in §385.21, shall not apply. The minimum for use in step 1 in §385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to §385.23(b)(1) is 18%, and the sound recording-only percentage applicable to §385.23(b)(2) is 22%, except that for purposes of paragraph (b) of this section the applicable consideration expensed by the service for the relevant rights shall consist only of applicable consideration expensed by the service, if any, that is incremental to the applicable consideration expensed for the rights to make the relevant permanent digital downloads and ringtones.
(b) *Computation of subminima.* For purposes of paragraph (a) of this section, the subminimum for an accounting period is the aggregate of the following with respect to all sound recordings of musical works used in the relevant subpart C offering, as defined in §385.21, of the service provider during the accounting period—
(1) Except as provided in paragraph (b)(3) of this section, in cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to engage in licensed subpart C activity, as defined in §385.21, with respect to a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, the appropriate all-in percentage from paragraph (a) of this section of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.
(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to engage in licensed subpart C activity, as defined in §385.21, with respect to a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, the appropriate sound recording-only percentage from paragraph (a) of this section of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.
(3) In the case of a music bundle containing a physical phonorecord, where the music bundle is distributed by a record company for resale and the record company is the compulsory licensee, the appropriate all-in percentage from paragraph (a) of this section of the record company's total wholesale revenue from the music bundle in accordance with GAAP for the accounting period, which amount shall equal the applicable consideration for such music bundle at the time such applicable consideration is properly recognized as revenue under GAAP, subject to the provisions of §201.19 of this title concerning the times at which distribution and revenue recognition are deemed to occur.

(4) If a record company providing sound recording rights to the service provider for a licensed subpart C activity, as defined in §385.21—
(i) Recognizes revenue (in accordance with GAAP, and including for the avoidance of doubt all applicable consideration with respect to such rights for the accounting period, regardless of the form or timing of payment) from a person or entity other than the service provider providing the licensed subpart C activity, as defined in §385.21, and its affiliates, and
(ii) Such revenue is received, in the context of the transactions involved, as applicable consideration for such rights,
(iii) Then such revenue shall be added to the amounts expensed by the service provider solely for purposes of paragraph (b)(1) or (2) of this section, as applicable, if not already included in such expensed amounts. Where the service provider is the licensee, if the service provider provides the record company all information necessary for the record company to determine whether additional royalties are payable by the service provider hereunder as a result of revenue recognized from a person or entity other than the service provider as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service provider to calculate the additional royalties and indemnify the service provider for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.
(c) *Computation of subscriber-based royalty rates.* For purposes of paragraphs (a)(3) and (4) of this section, to determine the subscriber-based minimum applicable to any particular subpart C offering, as defined in §385.21, the total number of subscriber-months for the accounting period shall be calculated, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the free trial royalty rate as described in §385.24. The product of the total number of subscriber-months for the accounting period and the specified number of cents per subscriber shall be used as the subscriber-based component of the minimum for the accounting period.

§385.24 Free trial periods.
(a) *General provisions.* This section establishes a royalty rate of zero in the case of certain free trial periods for mixed service bundles, paid locker services and limited offerings under a license pursuant to 17 U.S.C. 115. Subject to the requirements of 17 U.S.C. 115 and the additional provisions of paragraphs (b) through (e) of this section, the free trial royalty rate shall apply to a musical work when a record company transmits or authorizes the transmission, as part of a mixed service bundle, paid locker service or limited offering, of a sound recording that embodies such musical work, only if—
(1) The primary purpose of the record company in providing or authorizing the free trial period is to promote the applicable subpart C offering, as defined in §385.21;
(2) No applicable consideration for making or authorizing the transmissions is received by the record company, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration used to promote the sale or paid use of sound recordings or audiovisual works embodying musical works or the paid use of music services through which sound recordings or audiovisual works embodying musical works are available;
(3) The free trial period does not exceed 30 consecutive days per subscriber per two-year period;
(4) In connection with authorizing the transmissions, the record company has obtained from the service provider it authorizes a written representation that—
(i) The service provider agrees to maintain for a period of no less than 5 years from the end of each relevant accounting period complete and accurate records of the relevant authorization, and identifying each sound recording of a musical work made available through the free trial period, the licensed subpart C activity, as defined in §385.21, involved, and the number of plays or downloads, as applicable, of such recording;
(ii) The service is in all material respects operating with appropriate license authority with respect to the musical works it is using; and
(iii) The representation is signed by a person authorized to make the representation on behalf of the service provider;
(5) Upon receipt by the record company of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular service is in a material manner operating without appropriate license authority from such copyright owner, the record company shall within 5 business days withdraw by written notice its authorization of such uses of such copyright owner's musical works under the free trial royalty rate by that service;
(6) The free trial period is offered free of any charge to the end user; and

(7) End users are periodically offered an opportunity to subscribe to the service during such free trial period.
(b) *Recordkeeping by record companies.* To rely upon the free trial royalty rate for a free trial period, a record company making or authorizing the free trial period shall keep complete and accurate contemporaneous written records of the contractual terms that bear upon the free trial period; and further provided that, if the record company itself is conducting the free trial period, it shall also maintain any additional records described in paragraph (a)(4)(i) of this section. The records required by this paragraph (b) shall be maintained for no less time than the record company maintains records of usage of royalty-bearing uses involving the same type of licensed subpart C activity, as defined in §385.21, in the ordinary course of business, but in no event for less than 5 years from the conclusion of the licensed subpart C activity, as defined in §385.21, to which they pertain. If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under this paragraph (b) with respect to a specific free trial period, the record company shall provide complete and accurate documentation within 10 business days, except for any information required under paragraph (a)(4)(i) of this section, which shall be provided within 20 business days, and provided that if the copyright owner or agent requests information concerning a large volume of free trial periods or sound recordings, the record company shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the record company does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the record company (but not any third-party service it has authorized) shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.
(c) *Recordkeeping by services.* If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under paragraph (a)(4)(i) of this section by a service authorized by a record company with respect to a specific promotion, the service provider shall provide complete and accurate documentation within 20 business days, provided that if the copyright owner or agent requests information concerning a large volume of free trial periods or sound recordings, the service provider shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the service provider does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the service provider (but not the record company) will be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.
(d) *Interpretation.* The free trial royalty rate is exclusively for audio-only licensed subpart C activity, as defined in §385.21, involving musical works subject to licensing under 17 U.S.C. 115. The free trial royalty rate does not apply to any other use under 17 U.S.C. 115; nor does it apply to public performances, audiovisual works, lyrics or other uses outside the scope of 17 U.S.C. 115. Without limitation, uses subject to licensing under 17 U.S.C. 115 that do not qualify for the free trial royalty rate (including without limitation licensed subpart C activity, as defined in §385.21, beyond the time limitations applicable to the free trial royalty rate) require payment of applicable royalties. This section is based on an understanding of industry practices and market conditions at the time of its development, among other things. The terms of this section shall be subject to de novo review and consideration (or elimination altogether) in future proceedings before the Copyright Royalty Judges. Nothing in this section shall be interpreted or construed in such a manner as to nullify or diminish any limitation, requirement or obligation of 17 U.S.C. 115 or other protection for musical works afforded by the Copyright Act, 17 U.S.C. 101, *et seq.*

§385.25 Reproduction and distribution rights covered.
A compulsory license under 17 U.S.C. 115 extends to all reproduction and distribution rights that may be necessary for the provision of the licensed subpart C activity, as defined in §385.21, solely for the purpose of providing such licensed subpart C activity, as defined in §385.21 (and no other purpose).

§385.26 Effect of rates.
In any future proceedings under 17 U.S.C. 115(c)(3)(C) and (D), the royalty rates payable for a compulsory license shall be established de novo.