

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

*In re*

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

**Docket No. 21-CRB-0002-PBR  
(2023-2027)**

**RESPONSE OF THE NATIONAL RELIGIOUS  
BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE  
TO THE COPYRIGHT ROYALTY JUDGES' ORDER 6 REGARDING PROPOSALS**

The National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”) respectfully responds to the Copyright Royalty Judges’ December 2, 2022 Order 6 Regarding Proposals (“Order”) requiring the participants in the above-captioned proceeding to respond to six issues raised in that Order. The text of each issue is replicated below, with the NRBNMLC’s response regarding each such issue immediately following the question to which it relates.

**Issue 1: The participants’ proposals do not set forth proposed fees for 37 C.F.R. §§ 381.4, 381.7, and 381.8 for uses that would be binding on all owners and entities using the same license.**

**NRBNMLC’s Response:** The identified provisions largely concern stations affiliated with National Public Radio (“NPR”) and the Public Broadcasting Service (“PBS”). Historically, however, the NRBNMLC has submitted proposed rates jointly with The Harry Fox Agency LLC (“HFA”) for 37 C.F.R. 381.7(b)(4). Those participants did so here on June 21, 2021.

**Issue 2: Global Music Rights (“GMR”) and the Corporation for Public Broadcasting (“CPB”) have not submitted a settlement regarding 37 C.F.R. § 381.4 (although they have indicated that they will do so). See eCRB Nos. 25724, 25944.**

**NRBNMLC’s Response:** This issue does not pertain to the NRBNMLC.

**Issue 3: The Harry Fox Agency (“HFA”) and the Public Broadcasting Entities have not submitted a joint proposal concerning certain provisions of 37 C.F.R. § 381.7 and the fees for recording rights under 37 C.F.R. §§ 381.7(b)(1) and (2) (although they have indicated they will do so). See eCRB No. 25722.**

**NRBNMLC’s Response:** This issue does not pertain to the NRBNMLC. As noted in response to Issue 1, however, the NRBNMLC and HFA did submit a proposed term for 37 C.F.R. § 381.7(b)(4).

**Issue 4: GMR’s proposal regarding 37 C.F.R. § 381.5(c)(4)(i) is unclear regarding what is meant by “the 2022 rate.” See eCRB No. 25647.**

**NRBNMLC’s Response:** This issue largely pertains to GMR. The NRBNMLC notes, however, that it represents numerous noncommercial religious broadcasters affiliated with nonprofit educational institutions, including colleges and universities, and is submitting a joint proposal with GMR that would cover noncommercial broadcasting entities affiliated with colleges, universities, or other educational institutions that broadcast primarily in a religious format. That proposal would enable those stations, at their option, to pay the rates jointly proposed by GMR and the NRBNMLC for stations subject to 37 C.F.R. § 381.6.

**Issue 5: It is unclear how the proposed addition of the phrase “in the aggregate” to (a newly numbered) 37 C.F.R. §§ 381.5(c)(5) and 381.6(d)(4) makes the meaning different from the meaning of the current regulatory language. See eCRB Nos. 25647, 25662, 25650.**

**NRBNMLC’s Response:** The NRBNMLC jointly proposed this “in the aggregate” language in 37 C.F.R. § 381.6(d)(4) with both the American Society of Composers, Authors and Publishers (“ASCAP”) and GMR on September 9, 2021 and with SESAC Performing Rights, LLC (“SESAC”) on September 10, 2021. The NRBNMLC jointly made this proposal to clarify that the \$1 referred to in that section is a “catchall” one-time rate included merely to ensure that the statutory rates cover the universe of copyright owners, including copyright owners not affiliated with ASCAP, Broadcast Music, Inc. (“BMI”), SESAC, or GMR, each of whom has proposed separate rates. For example, the NRBNMLC-GMR proposal states:

GMR and the NRBNMLC also propose ... [t]he revision of current section 381.6(d)(4) (proposed to be renumbered as section 381.6(d)(5)) ... to make clear that the \$1 fee covers all public performances in the aggregate of all musical compositions not in the repertoires of ASCAP, BMI, SESAC, or GMR ... .”).

Joint Proposal of GMR and the NRBNMLC at 2 (Sept. 9, 2021); *see also* Joint Proposal of ASCAP and NRBNMLC at 3 (Sept. 9, 2021) (“ASCAP and the NRBNMLC propose [that] ... section 381.6(d)(4) should be changed to clarify the language... .”); Joint Proposal of SESAC and the NRBNMLC at 3 (Sept. 10, 2021) (“SESAC and the NRBNMLC propose [that] ... section 381.6(d)(4) should be changed to clarify the language ... .”).

The NRBNMLC – the only licensee participant who would be bound by this provision – is not aware of the \$1 catchall rate ever having been sought by a copyright owner not affiliated with ASCAP, BMI, SESAC, or GMR under the 17 U.S.C. § 118 rates. Given the lack of real-world economic significance of the rate, it was not a focus of negotiations with respect to the current 2018-2022 term. During the course of that term, however, the NRBNMLC became

aware of questions raised regarding the interpretation of this provision. The phrasing “in the aggregate” would resolve any such questions by making clear that the \$1 rate functions as a one-time catchall provision and is not interpreted to allow \$1 assessments on a more granular basis (e.g., per work, per copyright owner, or per play). More granular rates in many cases would result in absurdly high, and illogical, rates if those rates were applied universally. For example, if assessed on a per-play basis, \$1/play would result in a fee of \$105,120 for a station performing 12 compositions per hour in a year ( $\$105,120 = \$1/\text{play} * 12 \text{ plays/hour} * 24 \text{ hours/day} * 365 \text{ days/year}$ ). For 2022, that fee would be between seven (7) and nearly sixty-three (63) times higher than the aggregate section 118 fees for ASCAP, BMI, and SESAC combined. *See* 37 C.F.R. § 381.6(d) (reflecting 2022 aggregate fees for ASCAP, BMI, and SESAC ranging from \$1,672 to \$14,823).

For these reasons, the NRBNMLC supports the proposed language change and would object to language that does not make clear that the \$1 fee is a one-time aggregate fee that merely ensures universal rate coverage, not a fee assessed multiple times. If the Judges decide to publish the current language in 37 C.F.R. § 381.6(d)(4) for comment but make clear in that publication that the \$1 fee applies as a one-time aggregate fee merely to provide universal coverage, the NRBNMLC would not object to the current language remained unchanged.

The NRBNMLC also notes that ASCAP, BMI, SESAC, and GMR are unaffected by the provision in 37 C.F.R. § 381.6(d)(4) in the upcoming term. Because these entities have negotiated separate rates pertinent to this section, they will not be bound by this provision.

**Issue 6: In order for the Judges to adopt rates and terms of the sort proposed by ASCAP, BMI, GMR, and SESAC for noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc.**

**(“NPR”), absent a proceeding, the Judges require an agreement among participants to adopt rates proposed by PROs for 37 C.F.R. § 381.5, or some other explanation from proponents of each proposal of specific statutory authority for the Judges to adopt the existing proposals, but no such agreement or explanation of authority has been filed. See 17 U.S.C. § 801(b)(7)(A).**

**NRBNMLC’s Response:** This issue largely pertains to ASCAP, BMI, GMR, and SESAC. The NRBNMLC, however, that it is submitting a joint proposal with GMR that would cover noncommercial broadcasting entities affiliated with colleges, universities, or other educational institutions that broadcast primarily in a religious format.

Respectfully submitted,

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Noncommercial Music License Committee*

December 7, 2022

# Proof of Delivery

I hereby certify that on Wednesday, December 07, 2022, I provided a true and correct copy of the Response of the National Religious Broadcasters Noncommercial Music License Committee to the Copyright Royalty Judges' Order 6 Regarding Proposals to the following:

The Harry Fox Agency LLC, represented by Stephen Block, served via Email

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via E-Service at jennifer.criss@faegredrinker.com

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Public Broadcasting Entities, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

SESAC Performing Rights, LLC, represented by Timothy L Warnock, served via E-Service at twarnock@loeb.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via E-Service at scott@oandzlaw.com

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via E-Service at cheshirerigler@shrumhicks.com

Educational Media Foundation, represented by David Oxenford, served via E-Service at doxenford@wbklaw.com

Signed: /s/ Karyn K Ablin