

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)**

**JOINT PROPOSAL OF THE HARRY FOX AGENCY LLC, PUBLIC BROADCASTING
SERVICE, NATIONAL PUBLIC RADIO, INC., AND CORPORATION FOR PUBLIC
BROADCASTING REGARDING FEES FOR
RECORDING RIGHTS UNDER 37 C.F.R. §§ 381.7(B)(1), (B)(2), (B)(6)**

The Harry Fox Agency LLC (“HFA”), Public Broadcasting Service (“PBS”), National Public Radio, Inc. (“NPR”) and Corporation for Public Broadcasting (“CPB”) (collectively, the “Parties”) join in a 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 37 C.F.R. § 381.7(b)(2) for the years 2023 through 2027.

THE PROPOSAL

The recording rights provisions in 37 C.F.R. § 381.7 establish “rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities . . . and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities.” 37 C.F.R. § 381.7(a).

Subsection 381.7(b) contains the royalty rates and related terms for various uses of nondramatic performances and displays of musical works described above. Subsection 381.7(b)(1)(i) provides royalty rates for such uses in PBS-distributed television programs. Subsection 381.7(b)(1)(ii) provides royalty rates for such uses in television programs that are not distributed by PBS. Subsection 381.7(b)(2) provides royalty rates for such uses in an NPR program. Subsection 381.7(b)(4) provides royalty rates for such uses in radio programs not produced by NPR.¹

The Parties propose that the fees for each year of the 2023-2027 statutory license period for uses described in sections 381.7(b)(1) and (b)(2) should be changed to reflect a rate increase consistent with the prior percentage increase from the 2013-2017 license period to the 2018-2022 license period. In addition, the Parties propose that provision be made for a specific royalty pool associated with internet uses as well by including a new subsection 381.7(b)(6). The Parties further propose technical changes to sections 381.7(a) and 381.7(c) in order to account for the addition of subsection 381.7(b)(6). The Parties believe that these proposed royalty rates under subsections 381.7(b)(1) and (b)(2) are fair and reasonable. In addition, the Parties believe that the augmentation of the royalty pool to provide for additional royalties for internet uses fairly compensates copyright owners for uses that reflect current distribution methods of PBS- and NPR-distributed programming.

Specifically, the Parties propose that the rates for each year of the 2023-2027 statutory license period for uses described in 37 C.F.R. §§ 381.7(b)(1), (2), that the new provision 37

¹ The rate promulgated under subsection 381.7(b)(4) was the subject of a joint proposal among HFA and the National Religious Broadcasters Noncommercial Music License Committee, dated June 21, 2021. It is not addressed in this joint proposal.

C.F.R. § 381.7(b)(6), and the technical changes to 37 C.F.R. §§ 381.7(a), (c) should be as follows:

§381.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities, including transmission via the internet by PBS and NPR. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2023-2027
(A) Feature	\$121.07
(B) Concert feature (per minute)	\$36.36
(C) Background	\$61.19
(D) Theme:	
(1) Single program or first series program	\$61.19
(2) Other series program	\$24.84

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2023-2027
(A) Feature	\$10.01
(B) Concert feature (per minute)	\$2.63
(C) Background	\$4.35
(D) Theme:	
(1) Single program or first series program	\$4.35
(2) Other series program	\$1.73

...

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2023-2027
(A) Feature	\$13.11
(B) Concert feature (per minute)	\$19.24
(C) Background	\$6.56
(D) Theme:	
(1) Single program or first series program	\$6.56
(2) Other series program	\$2.62

...

(6) For each use licensed herein pursuant to (b)(1)(i) and (b)(2) of this section for transmission via the internet, the royalty fees shall include a pro-rata share of \$2,000 per calendar year, which share shall be determined by calculating the aggregate amount of royalty fees earned during that calendar year and dividing the sum by the amount of royalty fees earned for each use.

(c) *Payment of royalty rates.* The required royalty due under (b)(1), (b)(2), and (b)(4) shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year. The required royalty due under (b)(6) for each calendar year of the statutory license term shall be paid to each known copyright owner not later than March 31 of each following year for PBS- or NPR-distributed uses via the internet during the preceding calendar year.

...

HFA, PBS, NPR, and CPB also propose carrying forward unchanged the provisions currently set forth in 37 C.F.R. §§ 381.7 (b)(1)(iii), (b)(3), (b)(5), (d), and (e). Proposed regulatory language is set forth in Appendix A hereto.

CONCLUSION

HFA, PBS, NPR, and CPB respectfully request that the Copyright Royalty Judges adopt their joint proposal.

Respectfully submitted,

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NATIONAL PUBLIC RADIO (“NPR”)

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Dated: December 12, 2022

APPENDIX A

§ 381.7 Recording rights, rates, and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities, including transmission via the internet by PBS and NPR. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2023-2027
(A) Feature	\$121.07
(B) Concert feature (per minute)	\$36.36
(C) Background	\$61.19
(D) Theme:	
(1) Single program or first series program	\$61.19
(2) Other series program	\$24.84

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2023-2027
(A) Feature	\$10.01
(B) Concert feature (per minute)	\$2.63
(C) Background	\$4.35
(D) Theme:	
(1) Single program or first series program	\$4.35
(2) Other series program	\$1.73

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2023-2027
(A) Feature	\$13.11
(B) Concert feature (per minute)	\$19.24
(C) Background	\$6.56
(D) Theme:	
(1) Single program or first series program	\$6.56
(2) Other series program	\$2.62

(3) For purposes of this schedule, a “Concert Feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance, or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

...

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2022, shall be subject to the royalty rates established in this schedule.

(6) For each use licensed herein pursuant to (b)(1)(i) and (b)(2) of this section for transmission via the internet, the royalty fees shall include a pro-rata share of \$2,000 per calendar year, which share shall be determined by calculating the aggregate amount of royalty fees earned during that calendar year and dividing the sum by the amount of royalty fees earned for each use.

(c) *Payment of royalty rates.* The required royalty due under (b)(1), (b)(2), and (b)(4) shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year. The required royalty due under (b)(6) for each calendar year of the statutory license term shall be paid to each known copyright owner not later than March 31 of each following year for PBS- or NPR-distributed uses via the internet during the preceding calendar year.

(d) *Records of use—(1) Maintenance of cue sheets.* PBS and its stations, NPR, or other public broadcasting entities shall maintain and make available for examination pursuant to paragraph (e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) *Content of cue sheets or summaries.* Such cue sheets or summaries shall include:

- (i) The title, composer and author to the extent such information is reasonably obtainable.
- (ii) The type of use and manner of performance thereof in each case.
- (iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Judges. Deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard music cue sheets or summaries of same listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Royalty Judges upon their request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

Proof of Delivery

I hereby certify that on Monday, December 12, 2022, I provided a true and correct copy of the Joint Proposal of HFA, CPB, PBS, and NPR Regarding Fees for Recording Rights Under 37 C.F.R. §§ 381.7(b)(1), (b)(2), (b)(6) to the following:

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

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

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

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

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

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

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

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

Signed: /s/ James M Smith