

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)**

**SUBMISSION OF CORPORATION FOR PUBLIC BROADCASTING AND PUBLIC  
BROADCASTING SERVICE ON 37 C.F.R. § 381.8**

The Corporation for Public Broadcasting (“CPB”) and Public Broadcasting Service (“PBS” and, with CPB, the “Public Broadcasting Entities”) (each a “Party” to this proceeding) hereby submit proposed regulations, a draft of which is attached, to continue the rates and terms for the use of published pictorial, graphic, and sculptural works as set forth in 37 C.F.R. § 381.8 for the years 2023 through 2027 (the “2023-2027 Statutory License Term”).

The provisions of 37 C.F.R § 381.8 govern the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c).

The Public Broadcasting entities propose carrying forward the existing rates and terms. No participant in this proceeding has proposed alternative rates and terms, and the current rates and terms have governed since 2013 and were not increased (or addressed) in the 2018–2022 proceeding. Attached as Exhibit A is a proposed provision to be set forth in 37 CFR § 381.8. The proposed regulations attached as Exhibit A carry forward the existing regulations, except for (i) updating the dates referenced in the regulations to reflect the 2023-2027 term, (ii) clarifying that

these rates and terms apply only where the copyright owner has not otherwise licensed the works in question, and (iii) modifying the reporting requirement to be at the request of the copyright owner, which is comparable with other sections of Part 381. Attached as Exhibit B is a comparison document showing the proposed revisions to the current regulations.

Respectfully submitted,

**COUNSEL FOR PUBLIC  
BROADCASTING ENTITIES**

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**EXHIBIT A**

**§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.**

**(a) *Scope.*** This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c).

**(b) *Royalty rate.***

**(1)** The following schedule of rates shall apply to the use of works within the scope of this section not otherwise licensed by the copyright owner:

**(i)** For such uses in a PBS-distributed program:

	2023-2027
(A) For featured display of a work	\$70.75
(B) For background and montage display	34.50
(C) For use of a work for program identification or for thematic use	139.46
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	45.82

**(ii)** For such uses in other than PBS-distributed programs:

	2023-2027
(A) For featured display of a work	\$45.82
(B) For background and montage display	23.48

(C) For use of a work for program identification or for thematic use	93.65
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	23.49

(2) For the purposes of the schedule in paragraph (b)(1) of this section the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used 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.

(3) “Featured display” for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a “background or montage display”.

(4) “Thematic use” is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(5) “Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced” means a transparency or other reproduction of an underlying work of fine art.

**(c) *Payment of royalty rate.*** PBS or other public broadcasting entity shall pay the required royalty fees to each 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.

**(d) *Records of use.***

(1) PBS and its stations or other public broadcasting entity shall maintain and, upon request, furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

**(e) *Filing of use reports with the Copyright Royalty Judges.***

(1) PBS and its stations or other 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 lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

**(f) *Terms of use.***

(1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. 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 period 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, 2027, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

**EXHIBIT B**

**§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.**

**(a) *Scope.*** This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c).

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(C) For use of a work for program identification or for thematic use	93.65
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	23.49

(2) For the purposes of the schedule in paragraph (b)(1) of this section the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used 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.

(3) “Featured display” for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a “background or montage display”.

(4) “Thematic use” is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(5) “Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced” means a transparency or other reproduction of an underlying work of fine art.

(c) **Payment of royalty rate.** PBS or other public broadcasting entity shall pay the required royalty fees to each 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.

(d) **Records of use.**

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(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.



# Proof of Delivery

I hereby certify that on Thursday, January 05, 2023, I provided a true and correct copy of the SUBMISSION OF CORPORATION FOR PUBLIC BROADCASTING AND PUBLIC BROADCASTING SERVICE ON 37 C.F.R. § 381.8 to the following:

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

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

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

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

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

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

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

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

Signed: /s/ David P Mattern