

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

*Determination of Rates and Terms for  
Digital Performance of Sound Recordings  
by New Subscription Services and Making  
of Ephemeral Copies to Facilitate Those  
Performances (NSS V)*

Docket No. 23-CRB-0013-NSR  
(2026-2030)

**JOINT MOTION TO ADOPT SETTLEMENT**

SoundExchange, Inc. (“SoundExchange”), Sirius XM Radio Inc. (“Sirius XM”) and Stingray Music USA Inc. (“Stingray”) (collectively, the “Parties”) have reached a settlement of the above-captioned proceeding (the “Proceeding”). The Parties are pleased to submit the proposed regulatory language attached as Exhibit A (the “Settlement”) for publication in the *Federal Register* for notice and comment in accordance with 17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2). The Parties respectfully request that the Judges adopt the Settlement in its entirety as a settlement of rates and terms under Sections 112(e) and 114 of the Copyright Act for new subscription services of the type at issue in the Proceeding (*i.e.*, music services provided to residential subscribers as part of a cable or satellite television multi-channel offering subject to the royalty rates and terms in 37 C.F.R. Part 383).

**I. Background**

This Proceeding was commenced on January 5, 2024, for the purpose of determining royalty rates and terms under the Section 112(e) and 114 statutory licenses for the period 2026-2030 for the type of new subscription service defined in 37 C.F.R. § 383.2(f). 89 Fed. Reg. 810 (Jan. 5, 2024). Only the Parties filed petitions to participate.

SoundExchange is a nonprofit organization that is jointly controlled by representatives of sound recording copyright owners and performers. It collects and distributes digital performance royalties on behalf of more than 700,000 creators. The Copyright Royalty Judges have repeatedly designated SoundExchange as the collective to receive and distribute royalties under Sections 112(e) and 114 on behalf of all recording artists and copyright owners.

Sirius XM creates music and non-music programming and transmits it through its satellite digital audio radio service and other outlets. Sirius XM relies on the royalty rates and terms in 37 C.F.R. Part 383 for music programming it provides through the DiSH satellite television service.

Stingray streams and distributes a wide variety of music and non-music content both direct to consumer and through third-party distributors such as multichannel video programming distributors (“MVPDs”). Stingray relies on the royalty rates and terms in 37 C.F.R. Part 383 for music programming it provides through MVPDs.

## **II. Nature of the Settlement**

The Settlement incorporates the same royalty rate structure presently set forth in 37 C.F.R. Part 383, except that annual increases in the per-subscriber fees are to be based on changes in the Consumer Price Index for All Urban Consumers, rather than being pre-negotiated as during the current rate period. Thus, the statutory royalty rates for 2026 are to be based on an inflation adjustment to the 2025 rates currently provided in Section 383.3(a), and the rates for each subsequent year of the royalty period are to be determined by a similar adjustment.

The Parties have also agreed that the applicable terms incorporated by reference in Part 383 should be those finally determined in the *Web VI* proceeding (Docket No. 23-CRB-0012-WR (2026-2030)), except for (1) the provisions concerning auditing of payments and

distributions, which are substantively the same as those currently in effect for new subscription services of the type at issue in the Proceeding, and (2) a provision addressing distribution of royalties, which includes language based on that in 37 C.F.R. § 384.4(i)(1) and 37 C.F.R. § 370.4(f) permitting SoundExchange to use proxy data to distribute royalties when it is not able to obtain a usable report of use from a licensee. In other respects, the Settlement preserves the existing provisions of Part 383 with only minor updating.

### **III. Adoption of the Settlement by the Copyright Royalty Judges**

The Copyright Royalty Judges have the authority “[t]o adopt as a basis for statutory terms and rates . . . an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding” if other interested parties who “would be bound by the terms, rates or other determination” set by the agreement are afforded “an opportunity to comment on the agreement.” 17 U.S.C. § 801(b)(7)(A)(i). The Judges generally are required to adopt the rates and terms provided in such an agreement, unless a “participant [to the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” 78 Fed. Reg. 67,938, 67,939 (Nov. 13, 2013) (*Phonorecords II*) (quoting 17 U.S.C. § 801(b)(7)(A)(ii); alterations in original).

The Settlement is an agreement as described in 17 U.S.C. § 801(b)(7)(A) reached by all of the participants in the Proceeding. As a result, there is no basis for the Judges not to adopt the Settlement as the statutory terms and rates under Section 112(e) and 114 for services relying on the royalty rates and terms in 37 C.F.R. Part 383. Accordingly, the Parties respectfully request that the Judges publish the Settlement for notice and comment, and in due course adopt the Settlement in its entirety as the statutory rates and terms for such services.

Dated: September 9, 2024

Respectfully submitted,

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## EXHIBIT A

### PROPOSED REGULATIONS

The Parties propose that 37 C.F.R. Part 383 be revised to read as follows. (~~Bold strikethrough~~ indicates language to be deleted and **bold underline** indicates language to be added.)

#### § 383.1 General.

(a) *Scope*. This part 383 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of certain ephemeral recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period commencing January 1, ~~2021~~ **2026**, and continuing through December 31, ~~2025~~ **2030**.

(b) *Legal compliance*. Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections and the rates and terms of this part.

(c) *Relationship to voluntary agreements*. Notwithstanding the royalty rates and terms established in this part, the rates and terms of any voluntary license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this part to transmissions with the scope of such agreements.

#### § 383.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Bundled Contracts* means contracts between the Licensee and a Provider in which the Service is not the only content licensed by the Licensee to the Provider.

**(b) Collective means the collection and distribution organization that is designated by the Copyright Royalty Judges, and which, for the current rate period, is SoundExchange, Inc.**

~~(bc)~~ *Copyright Owner* means a sound recording copyright owner, or a rights owner under 17 U.S.C. 1401(l)(2), who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

~~(ed)~~ *License Period* means the period commencing January 1, ~~2021~~ **2026**, and continuing through December 31, ~~2025~~ **2030**.

~~(de)~~ *Licensee* is a person that has obtained statutory licenses under 17 U.S.C. 112(e) and 114, and the implementing regulations, to make digital audio transmissions as part of a Service (as defined in paragraph ~~(f)~~ **(f)** of this section), and ephemeral recordings for use in facilitating such transmissions.

**(f) Payor means the entity required to make royalty payments to the Collective or the entity required to distribute royalty fees collected, depending on context. The Payor is:**

**(1) A Licensee, in relation to the Collective; and**

**(2) The Collective in relation to a Copyright Owner or Performer.**

**(g) Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).**

**(eh)** *Provider* means a “multichannel video programming distributor” as that term is defined in 47 CFR 76.1000(e); notwithstanding such definition, for purposes of this part, a Provider shall include only a distributor of programming to televisions, such as a cable or satellite television provider.

**(i) Qualified auditor means a Certified Public Accountant independent within the meaning of the American Institute of Certified Public Accountants Code of Professional Conduct.**

**(fj)** A *Service* is a non-interactive (consistent with the definition of “interactive service” in 17 U.S.C. 114(j)(7)) audio-only subscription service (including accompanying information and graphics related to the audio) that is transmitted to residential subscribers of a television service through a Provider which is marketed as and is in fact primarily a video service where

(1) Subscribers do not pay a separate fee for audio channels.

(2) The audio channels are delivered by digital audio transmissions through a technology that is incapable of tracking the individual sound recordings received by any particular consumer.

(3) However, paragraph **(fj)**(2) of this section shall not apply to the Licensee’s current contracts with Providers that are in effect as of the effective date of this part if such Providers become capable in the future of tracking the individual sound recordings received by any particular consumer, provided that the audio channels continued to be delivered to Subscribers by digital audio transmissions and the Licensee remains incapable of tracking the individual sound recordings received by any particular consumer.

**(gk)** *Subscriber* means every residential subscriber to the underlying service of the Provider who receives Licensee’s Service in the United States for all or any part of a month; provided, however, that for any Licensee that is not able to track the number of subscribers on a per-day basis, “Subscribers” shall be calculated based on the average of the number of subscribers on the last day of the preceding month and the last day of the applicable month, unless the Service is paid by the Provider based on end-of-month numbers, in which event “Subscribers” shall be counted based on end-of-month data.

**(hl)** *Stand-Alone Contracts* means contracts between the Licensee and a Provider in which the only content licensed to the Provider is the Service.

**§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.**

(a) *Royalty rates.* Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112(e) to facilitate such transmissions during the License Period, are as follows. **For 2026, e**Each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, ~~the following a~~ monthly payment of \_\_\_\_\_<sup>1</sup> per Subscriber to the Service of such Licensee, **which is equivalent to the 2025 royalty rate of \$0.0234, as adjusted by the annual royalty fee adjustment in subsection (b).**;

~~(i) 2021: \$0.0208~~

~~(ii) 2022: \$0.0214~~

~~(iii) 2023: \$0.0221~~

~~(iv) 2024: \$0.0227~~

~~(v) 2025: \$0.0234~~

(2) For Bundled Contracts, ~~the following a~~ monthly payment of \_\_\_\_\_<sup>1</sup> per Subscriber to the Service of such Licensee, **which is equivalent to the 2025 royalty rate of \$0.0390, as adjusted by the annual royalty fee adjustment in subsection (b).**;

~~(i) 2021: \$0.0346~~

~~(ii) 2022: \$0.0356~~

~~(iii) 2023: \$0.0367~~

~~(iv) 2024: \$0.0378~~

~~(v) 2025: \$0.0390~~

**(b) Annual royalty fee adjustment. The Copyright Royalty Judges shall adjust the royalty fees each year, beginning with the fees for 2026, to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) published by the Secretary of Labor before**

<sup>1</sup> This blank to be completed by the Copyright Royalty Judges each year with the rate for such year determined based on subsection (b).

**December 1 of the preceding year. The calculation of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November, 2024 ( )<sup>2</sup> and shall be made according to the following formulas: For Stand-Alone Contracts,  $(1 + (C_v - )^2) / ^2) \times \$0.0234$ ; for Bundled Contracts,  $(1 + (C_v - )^2) / ^2) \times \$0.0390$ ; where  $C_v$  is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place. The Judges shall publish notice of the adjusted fees in the Federal Register at least 25 days before January 1 of each year of the License Period. The adjusted fees shall be effective on January 1 of each year of the License Period for such year.**

**(bc) Minimum fee.** Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars (\$100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to the section 112(e) and 114 statutory licenses. Such fee shall be recoupable and credited against royalties due in the calendar year ~~in~~ **for** which ~~it~~ **the payment** is **paid made**.

**(ed) Allocation between ephemeral recordings fees and performance royalty fees.** The Collective must credit 5% of all royalty payments as royalty payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions through a Service are included in the 5%.

#### **§ 383.4 Distribution of royalties.**

**The Collective must promptly distribute royalties received from Licensees to Copyright Owners and Performers that are entitled thereto, or to their designated agents. The Collective shall only be responsible for making distributions to those who provide the Collective with information as is necessary to identify and pay the correct recipient. The Collective must distribute royalties on a basis that values all usage by a Licensee equally based upon the information provided under the Reports of Use requirements for Licensees pursuant to § 370.4 of this chapter and this subpart. However, in any case in which a Licensee has not provided a compliant Report of Use, whether for the License Period or otherwise, and the board of directors of the Collective determines that further efforts to seek the missing Report of Use from the Licensee would not be warranted, the Collective may distribute the royalties associated with the Licensee's missing Report of Use on the basis of Reports of Use for the corresponding calendar year filed by other Licensees.**

#### **§ 383.5 Auditing payments and distributions.**

**(a) General. This section prescribes procedures by which any entity entitled to receive payment or distribution of royalties may verify payments or distributions by auditing the**

<sup>2</sup> This blank to be completed by the Copyright Royalty Judges with the CPI-U as of November 2024.



Payor. The Collective may audit a Licensee's payments of royalties to the Collective, and a Copyright Owner or Performer may audit the Collective's distributions of royalties to the Copyright Owner or Performer. Nothing in this section shall preclude a verifying entity and the Payor from agreeing to verification methods in addition to or different from those set forth in this section.

(b) *Frequency of auditing.* The verifying entity may conduct an audit of each licensee only once a year for any or all of the prior three calendar years. A verifying entity may not audit records for any calendar year more than once.

(c) *Notice of intent to audit.* The verifying entity must file with the Copyright Royalty Judges a notice of intent to audit the Payor, which notice the Judges must publish in the Federal Register within 30 days of the filing of the notice. Simultaneously with the filing of the notice, the verifying entity must deliver a copy to the Payor.

(d) *The audit.* The audit must be conducted during regular business hours by a Qualified Auditor who is not retained on a contingency fee basis and is identified in the notice. The auditor shall determine the accuracy of royalty payments or distributions, including whether an underpayment or overpayment of royalties was made. An audit of books and records, including underlying paperwork, performed in the ordinary course of business according to generally accepted auditing standards by a Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(e) *Access to third-party records for audit purposes.* The Payor must use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit.

(f) *Duty of auditor to consult.* The auditor must produce a written report to the verifying entity. Before rendering the report, unless the auditor has a reasonable basis to suspect fraud on the part of the Payor, the disclosure of which would, in the reasonable opinion of the auditor, prejudice any investigation of the suspected fraud, the auditor must review tentative written findings of the audit with the appropriate agent or employee of the Payor in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Payor reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit. The auditor must include in the written report information concerning the cooperation or the lack thereof of the employee or agent.

(g) *Audit results; underpayment or overpayment of royalties.* If the auditor determines the Payor underpaid royalties, the Payor shall remit the amount of any underpayment determined by the auditor to the verifying entity, together with interest at the rate specified in § 380.2(d). In the absence of mutually agreed payment terms, which may, but need not, include installment payments, the Payor shall remit promptly to the verifying entity the

**entire amount of the underpayment determined by the auditor. If the auditor determines the Pavor overpaid royalties, however, the verifying entity shall not be required to remit the amount of any overpayment to the Pavor, and the Pavor shall not seek by any means to recoup, offset, or take a credit for the overpayment, unless the Pavor and the verifying entity have agreed otherwise.**

**(h) *Paying the costs of the audit.* The verifying entity must pay the cost of the verification procedure, unless the auditor determines that there was a net underpayment (i.e., underpayments less any overpayments) of 10% or more, in which case the Pavor must bear the reasonable costs of the verification procedure, in addition to paying or distributing the amount of any underpayment.**

**(i) *Retention of audit report.* The verifying party must retain the report of the audit for a period of not less than three years from the date of issuance.**

**§ ~~383.4~~ 383.6 Terms for making payment of royalty fees.**

(a) Terms in general. Subject to the provisions of this section, terms governing timing and due dates of royalty payments to the Collective, late fees, statements of account, audit and verification of royalty payments and distributions, ~~cost of audit and verification, record retention~~ **of records** requirements, treatment of Licensees' confidential information, distribution of royalties by the Collective, unclaimed funds, designation of the Collective, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for ~~D~~**d**igital audio transmission and the reproduction of ephemeral recordings by Commercial Webcasters in ~~37 CFR~~ part 380, subpart A of this chapter, for the ~~H~~**L**icense ~~p~~**P**eriod ~~2021–2025~~. For purposes of this part, the term "Collective" refers to the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period ~~through 2020~~, the sole Collective is SoundExchange, Inc.

(b) *Reporting of performances.* Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) *Applicable regulations.* To the extent not inconsistent with this part, all applicable regulations, including part 370 of this chapter, shall apply to activities subject to this part.

# Proof of Delivery

I hereby certify that on Monday, September 09, 2024, I provided a true and correct copy of the Joint Motion to Adopt Settlement to the following:

Sirius XM Radio Inc., represented by Todd Larson, served via E-Service at todd.larson@weil.com

Stingray Music USA Inc., represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

Signed: /s/ Steven R. Englund