

### § 381.5

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and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP, BMI or SESAC covering the license period January 1, 2008, to December 31, 2012, to provide a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of four years following the first performance.

#### **§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, \$287 annually.

(2) For all such compositions in the repertory of BMI, \$287 annually.

(3) For all such compositions in the repertory of SESAC, \$116 annually.

(4) For the performance of any other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

#### **§ 381.6 Performance of musical compositions by other public broadcasting entities.**

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel (“IBOC”) digital radio signal and such programming is different than the station’s analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this

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section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1 .....	0–249,999 .....	\$ 550	\$ 567	\$ 583	\$ 601	\$ 619
Level 2 .....	250,000–499,999 .....	1,000	1,030	1,061	1,093	1,126
Level 3 .....	500,000–999,999 .....	1,500	1,545	1,591	1,639	1,688
Level 4 .....	1,000,000–1,499,999 .....	2,000	2,060	2,122	2,185	2,251
Level 5 .....	1,500,000–1,999,999 .....	2,500	2,575	2,652	2,732	2,814
Level 6 .....	2,000,000–2,499,999 .....	3,000	3,090	3,183	3,278	3,377
Level 7 .....	2,500,000–2,999,999 .....	3,500	3,605	3,713	3,825	3,939
Level 8 .....	3,000,000 and above .....	5,000	5,150	5,305	5,464	5,628

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1 .....	0–249,999 .....	\$ 550	\$ 567	\$ 583	\$ 601	\$ 619
Level 2 .....	250,000–499,999 .....	1,000	1,030	1,061	1,093	1,126
Level 3 .....	500,000–999,999 .....	1,500	1,545	1,591	1,639	1,688
Level 4 .....	1,000,000–1,499,999 .....	2,000	2,060	2,122	2,185	2,251
Level 5 .....	1,500,000–1,999,999 .....	2,500	2,575	2,652	2,732	2,814
Level 6 .....	2,000,000–2,499,999 .....	3,000	3,090	3,183	3,278	3,377
Level 7 .....	2,500,000–2,999,999 .....	3,500	3,605	3,713	3,825	3,939
Level 8 .....	3,000,000 and above .....	5,000	5,150	5,305	5,464	5,628

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1 .....	0–249,999 .....	\$ 120	\$ 124	\$ 127	\$ 131	\$ 135
Level 2 .....	250,000–499,999 .....	200	206	212	219	225
Level 3 .....	500,000–999,999 .....	300	309	318	328	338
Level 4 .....	1,000,000–1,499,999 .....	400	412	424	437	450
Level 5 .....	1,500,000–1,999,999 .....	500	515	530	546	563
Level 6 .....	2,000,000–2,499,999 .....	600	618	637	656	675
Level 7 .....	2,500,000–2,999,999 .....	700	721	743	765	788
Level 8 .....	3,000,000 and above .....	1,000	1,030	1,061	1,093	1,126

(4) For the performance of any other such compositions, in 2008 through 2012, \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make

its books and records relating to its Population Count available for inspection.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 10 stations to furnish such reports.

(f) *Definitions.* As used in paragraphs (c) and (d) of this section, the following terms and their variant forms mean the following:

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(1) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator Station or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator Station or a Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(2) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(3) *Translator Station and Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

**§ 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. 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:

	2008-2012
(A) Feature .....	\$114.09
(B) Concert feature (per minute) .....	34.26
(C) Background .....	57.66
(D) Theme:	
(1) Single program or first series program .....	57.66
(2) Other series program .....	23.41

(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:

	2008-2012
(A) Feature .....	\$9.43
(B) Concert feature (per minute) .....	2.48
(C) Background .....	4.10
(D) Theme:	
(1) Single program or first series of program .....	4.10
(2) Other series program .....	1.63

(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.