

§ 381.7

37 CFR Ch. III (7-1-08 Edition)

(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.

Copyright Royalty Board, Library of Congress

§ 381.7

(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 distrib-

uted 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.

	2008–2012
(i) Feature	\$12.35
(ii) Concert feature (per minute)	18.13
(iii) Background	6.19
(iv) Theme:	
(A) Single program or first series program	6.19
(B) Other series program	2.47

(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.

(4) For such uses other than in an NPR-produced radio program:

	2008–2012
(i) Feature	\$.79
(ii) Feature (concert) (per half hour)	1.65
(iii) Background40

(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, 2012, shall be subject to the royalty rates established in this schedule.

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.

(c) *Payment of royalty rates.* The required royalty rates 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.

(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)

§ 381.8

37 CFR Ch. III (7-1-08 Edition)

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.

§ 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:

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

	2008-2012
(A) For featured display of a work	\$69.70
(B) For background and montage display	33.99
(C) For use of a work for program identification or for thematic use	137.40
(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	45.14

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

	2008-2012
(A) For featured display of a work	\$45.14
(B) For background and montage display	23.13
(C) For use of a work for program identification or for thematic use	92.27
(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 this schedule	23.14

(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