

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Minimum fee.* Each Licensee shall pay a minimum fee of \$10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year. These minimum fees shall be non-refundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(c) *Other royalty rates and terms.* This part 384 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of ephemeral recordings beyond those set forth in paragraph (a) of this section. For ephemeral recordings other than those governed by paragraph (a) of this section, persons making such ephemeral recordings must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) or as prescribed by other law, regulation or agreement.

**§ 384.4 Terms for making payment of royalty fees and statements of account.**

(a) *Payment to Collective.* A Licensee shall make the royalty payments due under § 384.3 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 384.3 and to distribute such royalty payments to each Copyright Owner, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the FEDERAL REGISTER within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 384.3(a) by the 45th day after the end of each month for that month, except that if the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payments due under § 384.3(a) for the period from the beginning of the License Period through the last day of the month in which the Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 384.3(b) by January 31 of the applicable calendar year, except that:

(1) If the Copyright Royalty Judges issue their final determination adopting these rates and terms after the commencement of the License Period, then payment due under § 384.3(b) for 2009 shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Copyright Royalty Judges and published in the FEDERAL REGISTER; and

(2) Payment for a Licensee that has not previously made Ephemeral Recordings pursuant to the license under 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or

**§ 384.5**

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

the highest lawful rate, whichever is lower, for any payment received by the Collective after the due date. Late fees shall accrue from the due date until payment is received by the Collective.

(f) *Statements of account.* For any part of the period beginning on the date the Copyright Royalty Judges issue their final determination adopting these rates and terms and ending on December 31, 2013, during which a Licensee operates a Business Establishment Service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Collective a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Collective. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall contain only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.* The Collective shall distribute royalty payments directly to Copyright Owners; Provided that the Collective shall only be responsible for making distributions to those Copyright Owners who provide the Collective with such information as is necessary to identify and pay the correct recipient of such payments. The Collective shall distribute royalty payments on a basis that values all Ephemeral Recordings by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing reports of use of sound recordings by Licensees; Provided, however, that Copyright Owners that authorize the Collective may agree with the Collective to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Copyright Owners entitled to receive payments may agree with the Collective upon payment protocols to be used by the Collective that provide for alternative arrangements for the payment of royalties.

(h) *Permitted deductions.* The Collective may deduct from the payments made by Licensees under §384.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) may agree to permit the Collective to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Collective relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

**§ 384.5 Confidential information.**

(a) *Definition.* For purposes of this part, "Confidential Information" shall include the statements of account, any