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DETAILED INFORMATION FOR STATUTORY LICENSEES/SERVICE PROVIDERS (Including Recordkeeping)
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Statutory Licensees

New Subscription Services

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Definition

A "new subscription service" is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is

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<p>NPR Stations»</p> <p>New Subscription Services»</p> <p>Preexisting Subscription Services»</p> <p>Preexisting Satellite Digital Radio Services»</p> <p>Business Establishment Services»</p>	<p>not a preexisting subscription service (i.e., a subscription service that was in existence and making transmissions to the public for a fee on or before July 31, 1998) or a preexisting satellite digital audio radio service (i.e., a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license).</p>
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Rates

2005 License Period: Same rates as 1998-2004 License Period (set forth immediately below)

1998-2004: The following rates were announced in the Federal Register on February 6, 2004. These rates apply retroactively to performances made beginning on October 28, 1998. All services must make an initial payment, covering the period October 28, 1998 through February 29, 2004 on or before April 14, 2004. Thereafter, services must make payments on a monthly basis on or before the 45th day following the end of each month (e.g. the payment for March, 2004 is due on or before May 15, 2004). Statutory licensees shall, at their election, pay one of the following rates:

Monthly Royalty Rates - Statutory Licensees select between options (1), (2) and (3)

(1) Per Performance Option \$0.000762 per performance, except that 4% of performances shall bear no royalty.

(2) Aggregate Tuning Hour Option
 Non-Music Programming \$0.000762 per aggregate tuning hour for programming reasonably classified as news, talk, sports or business programming.

Broadcast \$0.0088 per

Simulcasts	aggregate tuning hour for broadcast simulcast programming not reasonably classified as news, talk, sports or business programming.
Other Programming	\$0.0117 for programming other than broadcast simulcast programming and programming reasonably classified as news, talk, sports or business programming.
(3) Percentage of Revenues Option	10.9% of subscription service revenues, but in no event less than 27¢ per month for each person who subscribes to the subscription service for all or any part of the month or to whom the subscription service otherwise delivered by license without a fee.

Minimum Annual Fee

\$500 per channel but no more than \$2,500 per year for services that elect the performance or aggregate tuning hours royalty option.
 \$5,000 per year for services that elect the percentage of revenues royalty option.

For purposes of these rates, the term “performance” means each instance in which any portion of a sound recording is transmitted to a listener, excluding incidental performances and performances of noncopyrighted sound

recordings or sound recordings subject to a direct license. The term "**aggregate tuning hour**" means the total hours of programming that the service has transmitted during a month to all listeners in the U.S. from all channels and stations, less actual running time of sound recordings for which the service has obtained a direct license or which do not require a license. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's aggregate tuning hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the service's aggregate tuning hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's aggregate tuning hours would equal 10. The term "**subscription service rates**" means "all monies and other consideration paid or payable, including the fair market value of noncash or in-kind consideration paid or payable by third parties from the operation of the subscription service." A more detailed definition is available at proposed 37 C.F.R. § 262.2(m). All new subscription services already in operation must elect to pay royalties on either a per performance or aggregate tuning hour basis for the entire term not later than 30 days after the rates are adopted by final order of the Librarian of Congress. New services must elect a rate structure not later than 30 days after they commence streaming. Services that fail to file a timely election will be presumed to have elected the per performance rates. For a more complete description of the rates and terms for new subscription services, see 69 FR 5693 February 6, 2004.

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Reporting Requirements

Pursuant to the Copyright Act, all services are required to submit reports detailing the sound recordings transmitted by them. On March 11, 2004, the Copyright Office issued long-

awaited interim regulations that establish notice and recordkeeping requirements for services operating under the statutory license. The regulations require digital music services to provide SoundExchange with detailed reports on the use of sound recordings for two weeks every calendar quarter. The Copyright Office indicated in the notice that its final regulations are likely to require year-round census reporting. The interim reports of use are to include specific identifying information that will enable SoundExchange to distribute royalties to those copyright owners and performers entitled to such royalties. The information music services are required to report is as follows:

- name of the service making transmissions;
- identification of the transmission category from one of eleven choices;
- name of the featured artist;
- sound recording title;
- album title and marketing label OR International Standard Recording Code ("ISRC"); and
- aggregate tuning hours, channel or program name, and play frequency OR actual total performances.

The regulations announced by the Copyright Office apply only on a prospective basis and do not address how digital music services will provide SoundExchange with notice of the use of sound recordings prior to April 12, 2004. The published regulations also do not address the manner in which music services are to deliver their reports of use to SoundExchange.

For a description of SoundExchange's proposal for how services should deliver Reports of Use of Sound Recordings, [click here](#).

For a copy of the Microsoft Excel template to be used for creating a Report of Use, [click here](#).

For examples on where you may locate the data elements

identifying particular sound recordings required to be reported under Copyright Office regulations, click here.

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Filing Dates

All new subscription services already in operation must elect to pay royalties on either a per performance or aggregate tuning hour basis for the entire term not later than 30 days after February 6, 2004 (i.e., the date the final rule announcing the rates was published in the Federal Register). New services must elect a rate structure not later than 30 days after they commence streaming. Services that fail to file a timely election will be presumed to have elected the per performance rates.

Monthly royalty payments are due on the 45th day after the end of each month (e.g., March royalty payments due in mid-May) along with the appropriate statement of account. Monthly payments for the period beginning on October 28, 1998 and ending on February 29, 2004 are due on or before April 14, 2004 (i.e. 45 days after the end of the month in which the final rule was published in the Federal Register).

Annual minimum payments are due no later than January 31 of the relevant year, except in 2003, when the minimum fees, if any, for calendar years 1998 through 2003 are due on or before April 14, 2004 (i.e., 45 days after the end of the month in which the final rule establishing the rates and term for the 1998-2004 license period was published in the Federal Register). In addition, given that the January 31 deadline for paying the 2004 annual minimum payment has already passed, statutory licensees should include their annual minimum payment with their annual minimum payment for 2003. New statutory licensees must pay the appropriate minimum by the 45th day after the end of the month in which the licensee commences streaming.

Monthly reports of use will be due

once the Copyright Office issues regulations.

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Forms

- [Please refer to the Download Forms page](#)

FTP Setup

[coming soon]

Applicable Laws/Regulations

- [17 U.S.C. § 112](#)
- [17 U.S.C. § 114](#)
- [37 C.F.R. Part 270 - Notice and Recordkeeping Requirements For Statutory Licenses, March 11, 2004](#)
- [37 C.F.R. Part 262 - Digital Performance Right in Sound Recordings and Ephemeral Recordings; Final Rule, February 6, 2004](#)
- [Notice and Recordkeeping for Use of Sound Recordings Under Statutory License; Notice of Inquiry, October 8, 2003](#)
- [Order of the Copyright Office in Docket Nos. 2002-1 CARP DTRA-3 and 2001-2 CARP DTNSRA, August 18, 2003](#)
- [Digital Performance Right in Sound Recordings and Ephemeral Recordings, Notice of Proposed Rulemaking, May 20, 2003](#)
- [Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Notice of Proposed Rulemaking, February 7, 2002](#)

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