

**Before the
COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, DC**

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In the Matter of:) **Docket No. 2011-2 CRB NCEB II**
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Determination of Reasonable Rates and)
Terms for Noncommercial Broadcasting)
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**RESPONSE TO REQUEST FOR COMMENTS ON PROPOSED RATES AND TERMS
FOR USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL
BROADCASTING FOR THE PERIOD COMMENCING JANUARY 1, 2013 AND
ENDING ON DECEMBER 31, 2017**

In response to the Copyright Royalty Judges’ request for comments on proposed rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2013 and ending on December 31, 2017, as published in the Federal Register, Vol. 77, No. 80 on April 25, 2012, Public Broadcasting Service (“PBS”) and National Public Radio, Inc. (“NPR”) (together the “Parties”) submit this joint proposal concerning the rates and terms in 37 C.F.R. § 381.4 and 37 C.F.R. § 381.8.

TITLE 37, SECTION 381.4 OF THE C.F.R.

The provisions in 37 C.F.R. § 381.4 establish “rates and terms [applicable] to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements.” (37 C.F.R. § 381.4)

Subsection 381.4(a) contains the royalty rates and related terms for various uses of nondramatic performances and displays of musical works described above. The remaining subsections of Section 381.4 contain terms governing the timing of royalty payments (§ 381.4(b)), the types of records of use required to be maintained and made available by public broadcasting entities (§ 381.4(c)), and the time period of use covered by this subsection (§ 381.4(d)).

TITLE 37, SECTION 381.8 OF THE C.F.R.

The provisions in 37 C.F.R. § 381.8 establish “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,” including, “the making of the reproductions described in 17 U.S.C. 118(c). (37 C.F.R. § 381.8(a))

Subsection 381.8(b) contains the royalty rates and related terms for various uses of the works within the scope of Subsection 381.8. The remaining subsections of Section 381.8 contain terms governing the timing of royalty payments (§ 381.8(c)), the types of records of use required to be maintained and made available by public broadcasting entities (§ 381.8(d)), the filing of use reports with the CRJ by certain public broadcasting entities (§ 381.8(e)), and the time period of use covered by this subsection (§ 381.8(f)).

THE PROPOSAL

The Parties propose that all of the rates and terms contained in Section 381.4 be carried forward for the 2013-2017 compulsory license period; *except* that the royalty rates for uses by

PBS, NPR and other public broadcasting entities of copyrighted published nondramatic musical compositions covered by Section 381.4 be changed to reflect a rate increase consistent with the prior percentage increase from the 2003-2007 license period to the 2008-2012 license period. The Parties therefore submit that the proposed increase in royalty rates under § 381.4(a) is fair and reasonable.

The Parties submit that the existing provisions of subsections 381.4(b)-(d) are fair and reasonable in that they facilitate efficient, consistent and accurate payments of royalties for uses governed by section 381.4, and should therefore be carried forward for the 2013-2017 compulsory license period.

In addition, the Parties propose that all of the rates and terms contained in Section 381.8 be carried forward for the 2013-2017 compulsory license period; *except* that the royalty rates for uses by public broadcasting entities of published pictorial, graphic, and sculptural works as covered by Section 381.8 be changed to reflect a rate increase consistent with the prior percentage increase from the 2003-2007 license period to the 2008-2012 license period. The Parties therefore submit that the proposed increase in royalty rates under § 381.8(b) is fair and reasonable.

The Parties submit that the existing provisions of subsections 381.8(c)-(f) are fair and reasonable in that they facilitate efficient, consistent and accurate payments of royalties for uses governed by section 381.8, and should therefore be carried forward for the 2013-2017 compulsory license period.

Draft regulations reflecting the above proposal are attached as Appendix A hereto.

CONCLUSION


The Parties respectfully submit that, except for the proposed changes in rates noted above, the rates and terms currently set forth in 37 C.F.R. § 381.4 and 37 C.F.R. § 381.8 should

be carried forward for the 2013-2017 compulsory license period, as reflected in the draft regulations attached as Appendix A hereto.

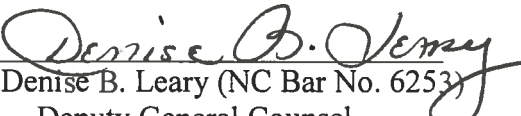
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Respectfully submitted,

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Dated: May 16, 2012

APPENDIX A

§ 381.4 – Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements.

(a) <i>Determination of royalty rate.</i> (1) For performance of such work in a feature presentation of PBS:	
2013-2017	\$232.18
(2) For performance of such a work as background or theme music in a PBS program:	
2013-2017	\$58.51
(3) For performance of such a work in a feature presentation of a station of PBS:	
2013-2017	\$19.84
(4) For performance of such a work as background or theme music in a program of a station of PBS:	
2013-2017	\$4.18
(5) For the performance of such a work in a feature presentation of NPR:	
2013-2017	\$23.53
(6) For the performance of such a work as background or theme music in an NPR program:	
2013-2017	\$5.70
(7) For the performance of such a work in a feature presentation of a station of NPR:	
2013-2017	\$1.66
(8) For the performance of such a work as background or theme music in a program of a station of NPR:	
2013-2017	\$.59

(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate 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.

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS 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, 2013, to December 31, 2017, 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.

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§ 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:

	2013-2017
(A) For featured display of a work	\$70.75
(B) For background and montage display	\$34.50
(C) For use of a work for program identification or for thematic use	\$139.46
(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	\$45.82

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

	2013-2017

(A) For featured display of a work	\$45.82
(B) For background and montage display	\$23.48
(C) For use of a work for program identification or for thematic use	\$93.65
(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	\$23.49

(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 pay the required royalty fees to each 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) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Royalty Judges.* (1) PBS and its stations or other 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 lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. 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 period 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, 2017, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.