

**Before the  
United States Copyright Royalty Judges  
Library of Congress**

In the Matter of:

Notice and Recordkeeping for Use of Sound  
Recordings under Statutory License

Docket No. 14-CRB-0005 (RM)

**COMMENTS OF SOUNDEXCHANGE, INC.**

SoundExchange, Inc. (“SoundExchange”) is pleased to provide these Comments in response to the Copyright Royalty Judges’ Notice of Proposed Rulemaking (“NPRM”) concerning notice and recordkeeping issues under the statutory licenses provided by Sections 112 and 114 of the Copyright Act. *See* 79 Fed. Reg. 25,038 (May 2, 2014). SoundExchange appreciates the Judges’ commencing this proceeding based in significant part on SoundExchange’s petition described in the NPRM (the “Petition”).

As the NPRM notes, SoundExchange is “the sole Collective designated by the Judges to collect and distribute sound recording royalties under the section 112(e) and 114 licenses.” 79 Fed. Reg. at 25,039. As such, the issues addressed in the NPRM are critically important to SoundExchange. The notice and recordkeeping regulations that the NPRM proposes to amend provide the basis for much of what SoundExchange does.

Because the Petition describes SoundExchange’s views concerning almost all of the issues raised in the NPRM, these Comments only briefly address a few points. The discussion of each follows the order of, and is captioned with reference to, the NPRM. SoundExchange anticipates providing more extensive reply comments after considering the initial comments provided by other interested parties.

### III. Joint Petition

As the NPRM explains, College Broadcasters, Inc., the American Council on Education and Intercollegiate Broadcasting Systems, Inc. filed a motion in October 2009 seeking “clarification” that the exemption from census-based reporting in Section 370.4(d)(3)(i) of the current regulations extends to Internet-only “minimum fee webcasters,” as well as those that are licensed broadcasters. The Judges have determined to treat the motion as a petition for a rulemaking (the “Joint Petition”). 79 Fed. Reg. at 25,039-40. Section 370.4(b)(2) of the proposed regulations set forth in the NPRM implement the Joint Petition. 79 Fed. Reg. at 25,046.

As a threshold matter, it is important to recognize that census reporting is, in general, a critical aspect of the statutory licenses. Artists and copyright owners should be paid as accurately as practicable for the use of their recordings, and census reporting is what makes that possible. As the Judges have noted, “[t]he failure to report the full actual number of performances of a sound recording is at odds with the purpose of the recordkeeping requirement to the extent that, as a result, many sound recordings are under-compensated or not compensated at all from the section 114 and 112 royalties.” Notice and Recordkeeping for Use of Sound recordings under Statutory License, 73 Fed. Reg. 79,727, 79,728-29 (Dec. 30, 2008). SoundExchange believes that the Judges were right in 2009 when they extended census reporting to almost all statutory license usage, and SoundExchange urges extreme caution when considering possible deviations from census reporting.

SoundExchange also believes that the Joint Petition is moot through 2015. The Joint Petition was filed in late 2009, right after the conclusion of the Judges’ last wide-ranging examination of the notice and recordkeeping regulations. The *Webcasting III* rate proceeding

was pending before the Judges at that time. Subsequent to the filing of the Joint Petition, the issues raised by the Joint Petition were fully addressed in *Webcasting III*. Pursuant to 37 C.F.R. § 380.23(g)(2), a “Noncommercial Educational Webcaster” with usage at a level covered by the minimum fee is currently permitted to provide reports of use on a sample basis just as contemplated by Section 370.4(b)(2) of the proposed regulations in the NPRM, and is even excused from reporting its aggregate tuning hours or actual total performances.<sup>1</sup> Moreover, the vast majority of Noncommercial Educational Webcasters are not even required to do that. Pursuant to 37 C.F.R. § 380.23(g)(1), Noncommercial Educational Webcasters with the lowest intensity of usage may elect to pay a “proxy fee” of \$100 and forgo providing reports of use altogether. For 2013, 97% of Noncommercial Educational Webcasters elected this reporting waiver, and were not required to provide any reports of use at all. Sections 380.23(g)(1) and (2) will remain in effect through at least the end of 2015, at which point the terms to be determined in the *Webcasting IV* proceeding will become effective.

All that said, SoundExchange does not oppose the definition of “Minimum Fee Broadcaster” set forth in Section 370.4(b)(2) of the proposed regulations in the NPRM.<sup>2</sup> Usage by internet-only educational webcasters represents only a tiny sliver of the market. And while the proposed changes to the definition would deviate from the principle of census reporting, they would do so only in a way that is currently permitted by Section 380.23(g)(2). Because the

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<sup>1</sup> Such services report play frequency in lieu of reporting aggregate tuning hours or actual total performances.

<sup>2</sup> SoundExchange notes that in Section 370.4(b)(2)(ii), there should be a comma following the phrase “officially sanctioned by,” and that in Section 370.4(b)(2)(iv), the reference should be to Section 118(f). SoundExchange also suggests that because the category of licensees entitled to provide sample reporting would be expanded to include service providers that are not “broadcasters,” the defined term used to denote such a licensee would more accurately be something like “Eligible Minimum Fee Webcaster.”

changes proposed for Section 370.4(b)(2) would simply give indefinite duration to the reporting arrangement for internet-only educational webcasters that applies today (when such webcasters do not elect the Section 380.23(g)(1) waiver), its adoption seems like a reasonable deviation from the important principle of census reporting.<sup>3</sup>

The same cannot be said of the broader alternative described in the NPRM. 79 Fed. Reg. at 25,040. While the universe of internet-only noncommercial webcasters that are not educational webcasters is small, such services are not currently covered by Section 380.23(g)(2). Moreover, while the exception for educational webcasters has been justified by their typically small and relatively inexperienced staff of student volunteers and old-fashioned radio-style programming technology, it is not evident that other internet-only noncommercial webcasters are similarly situated. If such services are staffed by professionals or use modern content management technology capable of readily generating reports of use on a census basis, they should not be exempted from census reporting just because they are low-intensity noncommercial users. SoundExchange does not believe that the case for a broader exemption has been made.

#### **IV. SoundExchange Petition**

As indicated above, SoundExchange appreciates the Judges' addressing its Petition by issuing the NPRM. In the absence of information concerning the views of other interested parties concerning the issues raised by the Petition, this portion of these Comments addresses only a few questions and clarifications arising from the NPRM.

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<sup>3</sup> Of course, if proposed Section 370.4(b)(2) is adopted, the same result should not continue to be implemented redundantly in Section 380.23(g)(2). Thus, if proposed Section 370.4(b)(2) is adopted, Section 380.23(g)(2) should be repealed, at least as part of the *Webcasting IV* terms.

**B. Flexibility in Reporting Format**

**1. Certification/Signature Requirements**

As the NPRM notes, SoundExchange's Petition asked the Judges to eliminate the handwritten signature requirement in 37 C.F.R. § 380.4(f)(3), 380.13(f)(3), 380.23(f)(4), and 384.4(f)(3). The Judges determined that this request by SoundExchange is moot. 79 Fed. Reg. 25,042 n.7.

The Judges are correct that the handwritten signature requirements in 37 C.F.R. § 380.4(f)(3) and 384.4(f)(3) have been eliminated since the filing of the Petition. 79 Fed. Reg. 23,102, 23,129 (Apr. 25, 2014) (amending 37 C.F.R. § 380.4(f)(3)); 78 Fed. Reg. 66,276, 66,278 (Nov. 5, 2013) (amending 37 C.F.R. § 384.4(f)(3)).

However, in their decision in the remand of the *Webcasting III* proceeding, the Judges addressed 380.13(f)(3) and 380.23(f)(4) by advertent to this proceeding:

The Judges note that the terms they adopted with regard to other categories of licensees did not eliminate the extant requirement for a handwritten signature on statements of account. *See, e.g.*, 37 CFR 380.13(f)(3) (for Broadcasters); 380.23(f)(4) (for Noncommercial Educational Webcasters). The signatories to the Agreements incorporating the handwritten signature requirement did not participate in the hearing, however, and did not request a change in the signature requirement in this proceeding. Given the advance of technology, the Judges anticipate such requests in the forthcoming rulemaking proceeding. *See* note 66, *infra* [describing the Petition].

79 Fed. Reg. at 23,124.

Accordingly, SoundExchange believes that its proposal to eliminate the handwritten signature requirement from 380.13(f)(3) and 380.23(f)(4) is not moot, and should instead be adopted in this proceeding for the same reasons the Judges have eliminated other handwritten signature requirements from their applicable regulations.

**C. Facilitating Unambiguous Identification of Recordings**

As SoundExchange explained in its Petition, it urges the Judges to adopt its proposed requirement that licensees provide ISRCs “where available and feasible,” as well as the album title and marketing label, in their reports of use. As the NPRM explains, this is the same requirement that applies to the preexisting subscription services. 79 Fed. Reg. at 25,042-43. We address this proposal in these Comments to elaborate on the “where available and feasible” standard beyond the description in the NPRM.

SoundExchange is mindful that for some services, particularly smaller services or noncommercial services, ISRCs may not be available, or it may not be feasible to extract ISRCs from the metadata of the library of sound recordings in their possession. SoundExchange is also mindful that for some recordings an ISRC may not have been issued, or may not have been encoded in a copy provided to a service. In those cases, services would not run afoul of the requirement to provide ISRCs, because the “available and feasible” standard would excuse them from providing ISRCs. As a result, the fact that ISRCs may be unavailable, or their reporting infeasible, for some services or recordings today is not a reason to reject SoundExchange’s proposal.

Instead, SoundExchange’s proposal addresses situations where ISRCs *are available* and their reporting *is feasible*. In those situations, services should not have the option to forgo provision of this most critical element of sound recording identifying information. ISRCs are widely used by record companies and most digital distribution companies for purposes of rights administration, and are used for reporting purposes in direct license arrangements between record companies and webcasting and on-demand services. Larger services that receive electronic copies of recordings from record companies and digital distribution companies should

typically receive ISRCs as part of the accompanying metadata. To the extent services obtain recordings from commercial products, the ISRC generally should be encoded thereon, and when present, easily can be extracted with widely-available software tools. Furthermore, as SoundExchange continues to enhance its computer systems and work with interested services to improve reporting, SoundExchange hopes that it will be able to provide ISRCs to interested services, either by offering them an ISRC search capability for recordings in its repertoire database or supplying them ISRCs that are missing from their reports of use (when the recordings can be identified in SoundExchange's repertoire database with reasonable confidence from other available information including the album title and marketing label name).

However services might obtain ISRCs, it is clear that (1) ISRCs are the gold standard for identifying recordings with precision; (2) they are often available to services today; and (3) ISRCs will only become more available as the digital music market matures. In such circumstances, services should not have the option to withhold provision of ISRCs that are available and feasibly can be provided. Doing so injects needless uncertainty and complication into the royalty distribution process. In the Judges' rare comprehensive review of the notice and recordkeeping requirements, the Judges should recognize the role that ISRCs play in the digital music marketplace today, and will increasingly play in the future, by making the reporting of ISRCs mandatory for all types of services "where available and feasible," just as is the case for preexisting subscription services.

**E. Late or Never-Delivered ROUs**

**1. Proxy Distribution**

As described in the NPRM, SoundExchange's Petition proposed creating standing authority for it to make proxy distributions when it appears unlikely to be able to obtain useable

reports of use from licensees. SoundExchange does not propose such a solution lightly.

SoundExchange wishes that it could obtain from licensees reports of use covering 100% of statutory royalty payments, and SoundExchange makes significant efforts to obtain as many missing reports of use as practicable. However, while it is unfortunate, it seems inevitable that there will always be some small portion of usage for which it will be impracticable to obtain useable reports of use.

SoundExchange further proposed that the methodological details of such proxy distributions not be specified in regulations for all time, but rather that it have flexibility to reassess those details with each proxy distribution. The NPRM raised various questions concerning the possibility of a notice and objection process for SoundExchange's adoption of a proxy distribution methodology. 79 Fed. Reg. at 25,043.

It should be understood that under SoundExchange's proposal, a proxy distribution would only be permissible when the actual usage is *unknowable* because "a Service has not provided a compliant Report of Use." Thus, in such a case, selecting a proxy methodology is not about achieving mathematical precision, because that is impossible. Proxies by their nature are not perfect. Instead, selecting a proxy methodology is about choosing an available data set that both is likely to be statistically representative of the repertoire probably used by the non-reporting services and will be practicable to process.

As SoundExchange explained in its Petition, if it is given further proxy distribution authority as a result of this proceeding, it does not presently contemplate any change to the proxy distribution methodology it used for the 2004-2009 distribution (the "Annual/License Type" methodology). That methodology involved distributing the otherwise undistributable royalties held by SoundExchange based on reports of use for the relevant year provided by other services



of the same type. 37 C.F.R. §§ 370.3(i), 370.4(f). That methodology was noncontroversial when adopted. 76 Fed. Reg. 45,695, 45,696 (Aug. 1, 2011) (explaining that nobody other than SoundExchange commented on its proxy proposal).

SoundExchange does not intend to use a different methodology unless technical reasons were to militate against using the Annual/License Type methodology. That might happen, for example, if the amount of money involved was so small that significant operational efficiencies could be achieved without materially affecting the outcome by combining pools of undistributable royalties.<sup>4</sup> In such a case, SoundExchange would adopt an alternative proxy that it judges likely to be statistically representative of the relevant missing data. However, it should be emphasized that the distribution would not be made arbitrarily. As proposed by SoundExchange, the distribution would be based on “a proxy data set” – meaning that each relevant undistributable royalty pool would be allocated based on some set of real-world usage data judged likely to be representative of the missing reports. Thus, for example, and depending on the circumstances, a proxy distribution might be based on reports of use from a different type of service, as was done for the 1998-2004 distribution mentioned in the NPRM, or based on all types of services in the aggregate.

Because a proxy distribution must be based on proxy data, selection of the proxy data set has limited effects on overall royalty payments. The 2004-2009 proxy distribution involved only about 3.4% of royalties over the relevant period, and future proxy distributions probably would

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<sup>4</sup> For webcasting, those circumstances are probably unlikely. However, there are many fewer licensees of other types. For example, there is only one preexisting satellite digital audio radio service, and there are only two preexisting subscription services. As a result, it is possible that the royalties from one type of service to be distributed by proxy might consist of just one service’s payment for one month, and it is also possible that just one service’s non-reporting over a several month period could materially affect the usability of the Annual/License Type methodology.

involve similarly small percentages of the total royalties. Thus, in any proxy distribution, regardless of the methodology selected, every payee will on average receive a payment equal to a few percent of that payee's royalty distributions for the period in the ordinary course. Selection of a methodology affects only the question of whether some individual payees will receive more or less than the average percentage of their ordinary-course payments based on differences in the distribution of usage among the alternative possible proxy data sets. Thus, while SoundExchange takes seriously the selection of a proxy data set that is likely reasonably to approximate the distribution of usage associated with the missing reports, that should be recognized as a choice that has only a small and marginal effect on overall royalty payments to individual artists and copyright owners.

In view of the foregoing, SoundExchange continues to believe that determination of any adjustments in the proxy distribution methodology is best left to SoundExchange's Board of Directors. SoundExchange as an institution does not have a vested interest in the selection of any particular proxy distribution methodology – it will distribute the available royalty pool by whatever proxy methodology the Board determines is most fair to its constituents. SoundExchange's Board is equally and broadly representative of artists and copyright owners, who are the real parties in interest here, and members of the Board consult with their constituents when appropriate. Thus, the ordinary operation of SoundExchange's Board provides meaningful opportunities for input by the affected stakeholders, and no proxy distribution proposal could be adopted if a material segment of artists or record companies believed that it was unfair.

SoundExchange would not depart from the Annual/License Type methodology without going through a reasoned analysis at least somewhat analogous to the one that led to its

recommendation of that methodology in the first place.<sup>5</sup> Before proposing the 2004-2009 proxy distribution, SoundExchange engaged an economic consulting firm with significant experience in royalty distribution issues affecting copyright collectives to advise SoundExchange concerning the development of its proposal. That firm evaluated the effects of application of the proxy across different service types, years, levels of music usage by services, and artist/copyright owner payment levels. Within each category of service and year, that firm found that the proxy resulted in a percentage distribution of royalties to both higher- and lower-paid artists and copyright owners that was generally consistent with reported usage by services with diverse levels of music usage. It was only after that analytical process that SoundExchange concluded that its proposal would be fair and equitable.

Given its expertise and access to data, and the composition of its Board, SoundExchange is in the best position to make an informed, data-driven judgment concerning the technical issues presented and the relative merits of possible alternative approaches to making a proxy distribution when it is unable to obtain useable reports of use from licensees. If the technical issues implicated in selecting a proxy distribution methodology engender any controversy at all, that controversy would be resolved on a more informed basis by SoundExchange and its Board than it would be through a process that invites the public to speculate about what other data might be available and practicable for SoundExchange to process, and about the statistical effects of distributing based on one data set rather than another.

Accordingly, SoundExchange believes that an objection process would be counterproductive and should not be adopted in this proceeding. SoundExchange does not object

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<sup>5</sup> Circumstances may not warrant the full analysis, particularly if a problem with using the Annual/License Type methodology in some future set of circumstances was facially apparent.

to a requirement that it provide royalty recipients notice of the basic approach used to calculate a proxy distribution, but it anticipates doing that even absent a requirement to do so.

## **2. Late Fees**

SoundExchange's Petition proposes a late fee for submission of late or noncompliant reports of use. In the NPRM, the Judges inquire whether the proposed late fee would be effective without being punitive, and whether late fees should be capped. 79 Fed. Reg. at 25,043-44.

Late submission of reports of use has been a persistent problem. For 2013, approximately two-thirds of licensees required to deliver reports of use have not delivered at least one required report, and at least one quarter of such licensees have not delivered any such reports at all. That is why the 2004-2009 proxy distribution described above was necessary, and why SoundExchange's Petition requested standing authority to make proxy distributions when reasonable efforts to obtain missing reports of use have been exhausted. While proxy distribution does eventually put the relevant money into the hands of artists and copyright owners, it does so only years after the royalties were earned and with less than the mathematical precision the Judges have determined they want. Creating standing proxy authority also creates a risk of even greater noncompliance, because licensees will know that their royalties will eventually be distributed even if they never provide a report of use. Accordingly, it is important to the operation of the system the Judges have created that licensees are motivated to provide the information necessary to allow SoundExchange to distribute royalties with reasonable precision.

SoundExchange believes that the proposed late fee would be effective at addressing this problem without being punitive. Experience with adoption of the late fee for statements of account indicates that late fees are effective at promoting compliance. Without late fees,

licensees have not made compliance a priority and regularly flout the rules. Threatened with imposition of a late fee, licensees generally comply. As explained in the Petition, SoundExchange cannot pay artists and copyright owners as the Judges have instructed it to do unless it receives three things from licensees: (1) a payment to allocate, (2) a statement of account allocating the payment to a specific service and time period and reflecting the calculation of the payment, and (3) a report of use detailing the usage corresponding to the payment. The Judges have imposed late fees for payments and statements of account because they concluded that doing so would be effective to promote compliance. Reports of use are similarly situated. If the Judges want effectively to complete the process of putting royalties into the hands of artists and copyright owners who have earned them, they must provide a greater incentive for licensees to provide the reports of use necessary to allow that to happen.

As for a late fee being punitive, services can avoid late fees *altogether* by simply complying with the Judges' regulations. SoundExchange and the artists and copyright owners it represents would much rather have a smooth and timely flow of royalties through the system than chase after late fees on any of the three items necessary to enable such a flow. However, for licensees that stubbornly refuse to provide required reports of use, the proposed late fee is not punitive and is effectively capped. In Section 370.6(a), SoundExchange proposed that the quantum of late fees be determined by "the percentage rate specified for late payments in the applicable regulations." That is a rate that the Judges have previously determined not to be punitive.

Moreover, pursuant to Section 370.6(a), late fees for reports of use would cease to accrue when the relevant royalties are distributed pursuant to a proxy distribution. The proposed regulations do not specify a particular timetable for proxy distributions, because the time

required for SoundExchange to determine that “further efforts to seek missing Reports of Use from the Service would not be warranted” may vary with the degree of licensees’ cooperation or lack thereof. However, the artists and copyright owners represented on SoundExchange’s Board are highly motivated to get paid. SoundExchange as an institution is also highly motivated to get undistributable royalties off its books, because it is SoundExchange – not the recalcitrant licensee – that faces public criticism for carrying undistributable royalties on its books. Thus, based on experience, SoundExchange would expect to make a proxy distribution approximately two to three years after the close of the relevant period, effectively capping the late fees at the amount payable at that time.

#### **H. Proposals SoundExchange Characterizes as Housekeeping**

##### **2. Inspection of ROUs**

Given the brevity of the NPRM’s description of SoundExchange’s proposed changes to Section 370.5(d), it may be helpful to elaborate on why SoundExchange believes these changes are properly characterized as “housekeeping.”

As explained at greater length in the Petition, SoundExchange first proposes providing an ROU inspection right to featured artists as well as copyright owners, because that would reflect a statutory change made since the relevant provision was originally adopted. Section 114 did not contemplate direct payments to featured artists by SoundExchange at the time the language now found in Section 370.5(d) was originally adopted. *See* 63 Fed. Reg. 34,289, 34,297 (June 24, 1998). In 2002, the Small Webcaster Settlement Act, Pub. L. No. 107-321, 116 Stat. 2780 § 5(c) (2002), amended Section 114(g)(2) to recognize collective administration of the statutory license and provide for direct payments to artists by SoundExchange. Section 370.5(d) was never amended to reflect that change. Because artists are entitled to direct payments from

SoundExchange on a similar basis as copyright owners, SoundExchange believes that the notice and recordkeeping regulations should recognize that featured artists have the same right to inspect ROUs as record companies, and that adding such a provision simply conforms Section 370.5(d) to amended Section 114(g)(2).

Second, SoundExchange proposes deleting the last sentence of Section 370.5(d), which provides that “The Collective shall render its best efforts to locate copyright owners *in order to make available reports of use*, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.” 37 C.F.R. § 370.5(d) (emphasis added). SoundExchange proposes deleting this sentence because “mak[ing] available reports of use” has never been a significant aspect of the operation of the statutory licenses.

To be absolutely clear, this proposal does not reflect any desire or intention by SoundExchange to devote fewer resources to locating copyright owners (and artists) who are entitled to *payment*. SoundExchange’s goal has always been – and remains – to get artists and labels paid for the performance royalties they’ve earned and deserve. To achieve that goal, SoundExchange uses not only the Copyright Office public records and published directories of record companies referred to in the last sentence of Section 370.5(d), but collaborative matching exercises with other organizations, crowdsourcing, social media outreach, agent/management contacts, trade shows, placement of news articles and advertisements concerning unclaimed funds, and other means to locate artists and copyright owners who are unregistered. However, because Section 370.5(d) is focused on making available reports of use, Section 370.5(d) does not speak to such efforts at all.

Nor does this proposal reflect any desire or intention by SoundExchange to limit *access* to reports of use to payees who want to access them (e.g., in an audit). As described above,

SoundExchange's proposed changes to Section 370.5(d) would *expand* access to reports of use rather than shrink it.

Instead, this proposal is about removing a requirement that SoundExchange expend efforts to try to make available to copyright owners the reports of use – that is, the massive, unsorted and unfiltered raw data files that services provide to SoundExchange – when copyright owners rarely want to see raw reports of use, and “inspection” of reports of use “during normal office hours” would be useless except in an audit. SoundExchange receives approximately a thousand reports of use per month, with the largest of them having on the order of a million consolidated performance lines (corresponding to about 30,000 single-spaced pages in landscape format). Back before SoundExchange was formed, when there were only three services operating under the statutory licenses, the Copyright Office seems to have had the idea that copyright owners who were not members of the collective could visit the collective's reading room to look through reports of use to identify their tracks that had been used by services.<sup>6</sup> However, that is not the way the statutory licenses have ever worked in practice, and certainly would not be sensible today. Instead, copyright owners and artists – whether or not they are members of SoundExchange – receive notice of the use of their recordings from the individualized royalty statements SoundExchange generates for them reflecting usage of their works (but only their works) across all services. Deletion of the last sentence of Section 370.5(d) simply acknowledges that reality.

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<sup>6</sup> See 63 Fed. Reg. at 34,293-94 (referring to the collective as a “central repository” for reports of use).



## 5. Miscellaneous

The NPRM notes SoundExchange's proposal of a September 30 deadline for it to post its annual report pursuant to Section 370.5(c). However, the NPRM does not fully illuminate SoundExchange's reasoning for choosing September 30 rather than some earlier date (such as March 31, the date the Judges previously have said they prefer).

To be clear about that, it must be remembered that SoundExchange knows of its royalty collections only when services send their payments and statements of account to SoundExchange,<sup>7</sup> and by March 31, SoundExchange has barely received the payments for the previous December. The Judges' regulations do not require services to pay SoundExchange for December usage until mid-February. *E.g.*, 37 C.F.R. § 380.4(c). Moreover, in 2013, approximately a third of royalty payments were not made on time. Thus, it is only as March 31 is beginning to loom that SoundExchange can reasonably determine its royalty collections for December and close its books on the previous year. As a result, SoundExchange's annual audit typically is not complete until June of the following year. Providing annual reports by March 31 has required SoundExchange to base its annual reports on incomplete and unaudited numbers. We believe that the purpose of the annual reports would be better served by providing reports with more definitive, audited numbers. We suggest the September 30 deadline because that would provide a reasonable time after completion of SoundExchange's annual audit to prepare an annual report reflecting the audited numbers.

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<sup>7</sup> This is different from most businesses accounting on an accrual basis, which know their annual revenues at the close of the year based on invoices generated and goods shipped or services provided.

**CONCLUSION**

SoundExchange appreciates the opportunity to provide these Comments and looks forward to participating in further proceedings concerning the important issues raised by the NPRM.

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Respectfully submitted,



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