

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.**

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**In re** )  
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**DETERMINATION OF ROYALTY** ) **Docket No. 14-CRB-0001-WR (2016-2020)**  
**RATES AND TERMS FOR** )  
**EPHEMERAL RECORDING AND** )  
**DIGITAL PERFORMANCE OF** )  
**SOUND RECORDINGS (WEB IV)** )  
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**PROPOSED RATES AND TERMS OF PANDORA MEDIA, INC.**

Pursuant to 37 C.F.R. § 351.4(b)(3), Pandora Media, Inc. (“Pandora”) proposes the following range of rates for subscription and nonsubscription commercial webcasters under the statutory license provided by 17 U.S.C. § 114, together with the making of ephemeral recordings necessary to facilitate such transmissions under the statutory license provided by 17 U.S.C. § 112(e) during the period January, 1, 2016 through December 31, 2020:

**A. Low End of Proposed Range**

A royalty equal to the greater of (i) or (ii) below:

(i) A usage-based royalty computed on a per-performance basis as follows:

YEAR	PER NONSUBSCRIPTION PERFORMANCE	PER SUBSCRIPTION PERFORMANCE
2016	\$0.00110	\$0.00215
2017	\$0.00112	\$0.00218
2018	\$0.00114	\$0.00222
2019	\$0.00116	\$0.00226
2020	\$0.00118	\$0.00230

(ii) 25% of Revenue from Eligible Transmissions.

**B. High End of Proposed Range**

A royalty equal to the greater of (i) or (ii) below:

(i) A usage-based royalty computed on a per-performance basis as follows:

YEAR	PER NONSUBSCRIPTION PERFORMANCE	PER SUBSCRIPTION PERFORMANCE
2016	\$0.00120	\$0.00224
2017	\$0.00123	\$0.00228
2018	\$0.00125	\$0.00232
2019	\$0.00127	\$0.00236
2020	\$0.00129	\$0.00240

(ii) 25% of Revenue from Eligible Transmissions.

Pandora proposes that the combined Section 112/114 royalty described above be allocated 5% to Section 112 and 95% to Section 114, in the manner presently set forth in 37 C.F.R. § 380.3(c).

The attached proposed rates and terms (using the low end of Pandora’s proposed rate range) provide more detail on the applicable definitions of “Performance” and “Revenue” (among others), an appropriate credit for directly licensed sound recording performances, and the allocation of license fees between the Section 114 and 112 licenses, along with other generally technical and conforming changes to the existing regulations discussed in the written testimony of Pandora CFO Mike Herring. Other than the changes shown below in redline, Pandora proposes that the terms currently set forth in 37 C.F.R. § 380 be continued.

37 C.F.R. PART 380  
[PROPOSED CHANGES IN REDLINE]

SUBPART A – RATES AND TERMS FOR COMMERCIAL WEBCASTERS AND  
NONCOMMERCIAL WEBCASTERS

...

§ 380.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

...

*Commercial Webcaster* is a Licensee, other than a Noncommercial Webcaster, that makes eligible digital audio transmissions [of sound recordings pursuant to the statutory licenses under 17 U.S.C. 112 and 114.](#)

...

[Eligible Transmission](#) is a subscription or nonsubscription transmission made by Licensee that is subject to licensing under 17 U.S.C. §114(d)(2) and the payment of royalties under 37 C.F.R. Part 380.

...

*Performance* is each instance in which any portion of a sound recording is publicly performed to a listener [in the United States](#) by means of a digital audio transmission ~~(e.g., the delivery of any portion of a single track from a compact disc to one listener)~~, but excluding the following:

- (1) A performance of a sound recording that does not require a license (e.g., a sound recording that is not copyrighted);
- (2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and
- (3) An incidental performance that both:
  - (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events, and
  - (ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

...

Revenue is all money earned by Licensee consistent with Generally Accepted Accounting Principles (“GAAP”) which is derived by the Licensee from making Eligible Transmissions in the United States, and shall be comprised of the following:

(a) Subscription revenue earned by Licensee directly from U.S. subscribers for making Eligible Transmissions; and

(b) Licensee's advertising revenues, or other monies received from sponsors, if any, attributable to advertising on channels making Eligible Transmissions, other than those that use only incidental performances of sound recordings, less advertising agency and sales commissions.

For the avoidance of doubt, Revenue shall exclude revenue from activities other than making Eligible Transmissions.

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§ 380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) **Royalty rates.** Royalty rates ~~and fees~~ for ~~e~~Eligible ~~digital~~ ~~T~~ransmissions of sound recordings made pursuant to 17 U.S.C. 114, and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) are as follows:

~~(1) **Commercial Webcasters:** For all digital audio transmissions, including simultaneous digital audio retransmissions of over the air AM or FM radio broadcasts, and related Ephemeral Recordings, a Commercial Webcaster will pay a royalty of: \$0.0019 per performance for 2011; \$0.0021 per performance for 2012; \$0.0021 per performance for 2013; \$0.0023 per performance for 2014; and \$0.0023 per performance for 2015.~~

(1) **Commercial Webcasters:** (a) For all Eligible Transmissions and related Ephemeral Recordings, a royalty equal to the greater of (i) or (ii) below:

(i) A usage-based royalty computed on a per-performance basis as follows:

<u>YEAR</u>	<u>PER NON-SUBSCRIPTION PERFORMANCE</u>	<u>PER SUBSCRIPTION PERFORMANCE</u>
<u>2016</u>	<u>\$0.00110</u>	<u>\$0.00215</u>
<u>2017</u>	<u>\$0.00112</u>	<u>\$0.00218</u>
<u>2018</u>	<u>\$0.00114</u>	<u>\$0.00222</u>
<u>2019</u>	<u>\$0.00116</u>	<u>\$0.00226</u>
<u>2020</u>	<u>\$0.00118</u>	<u>\$0.00230</u>

(ii) 25% of Revenue from Eligible Transmissions.

(b) The determination of whether Licensee shall pay according to (a)(i) or (ii) above for a given payment period shall be made with respect to all Performances, regardless of whether Licensee has licensed any such Performances directly from the copyright owner or an agent of the owner.

If, after such determination, Licensee is subject to subparagraph (i), it need not make a payment under this Section for any directly licensed Performances or Performances of sound recordings fixed before February 15, 1972.

If, after such determination, Licensee is subject to subparagraph (ii), the fee owed may, prior to payment, be reduced by a percentage referred to herein as the “Direct License Share,” which is the result of dividing Licensee’s Performances of directly-licensed recordings by the total number of Licensee’s Performances of all sound recordings during the payment period.

...

**(c) *Ephemeral recordings.*** The royalty payable under 17 U.S.C. 112(e) for the making of all Ephemeral Recordings used by the Licensee solely to facilitate transmissions ~~for which it pays royalties~~ made pursuant to 17 U.S.C. 114 shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

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

...

**(e) *Late payments and statements of account.*** A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment ~~and/or~~ statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment and the related statement of account are received by the Collective. A single late fee of 1.5% per month shall be due in the event both a payment and statement of account are received by the Collective after the due date.

**(f) *Statements of account.*** Any payment due under § 380.3 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

...

**(8)** A statement to the following effect:

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

This attestation shall not prevent a Licensee from making good faith revisions or adjustments to its Statements of Account that it later determines to be necessary to accurately reflect its liabilities due under this Subpart.

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*Eligible Transmission* is a subscription or nonsubscription transmission made by Licensee that is subject to licensing under 17 U.S.C. §114(d)(2) and the payment of royalties under 37 C.F.R. Part 380.

...

*Performance* is each instance in which any portion of a sound recording is publicly performed to a listener in the United States by means of a digital audio transmission, but excluding the following:

- (1) A performance of a sound recording that does not require a license (*e.g.*, a sound recording that is not copyrighted);
- (2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and
- (3) An incidental performance that both:
  - (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events, and
  - (ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

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Revenue is all money earned by Licensee consistent with Generally Accepted Accounting Principles (“GAAP”) which is derived by the Licensee from making Eligible Transmissions in the United States, and shall be comprised of the following:

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**(a) Royalty rates.** Royalty rates for Eligible Transmissions of sound recordings made pursuant to 17 U.S.C. 114, and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) are as follows:

**(1) Commercial Webcasters:** (a) For all Eligible Transmissions and related Ephemeral Recordings, a royalty equal to the greater of (i) or (ii) below:

(i) A usage-based royalty computed on a per-performance basis as follows:

YEAR	PER NON-SUBSCRIPTION PERFORMANCE	PER SUBSCRIPTION PERFORMANCE
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If, after such determination, Licensee is subject to subparagraph (i), it need not make a payment under this Section for any directly licensed Performances or Performances of sound recordings fixed before February 15, 1972.

If, after such determination, Licensee is subject to subparagraph (ii), the fee owed may, prior to payment, be reduced by a percentage referred to herein as the "Direct License Share," which is the result of dividing Licensee's Performances of directly-licensed recordings by the total number of Licensee's Performances of all sound recordings during the payment period.

...

**(c) *Ephemeral recordings.*** The royalty payable under 17 U.S.C. 112(e) for the making of all Ephemeral Recordings used by the Licensee solely to facilitate transmissions made pursuant to 17 U.S.C. 114 shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

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

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**(e) *Late payments and statements of account.*** A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment and the related statement of account are received by the Collective. A single late fee of 1.5% per month shall be due in the event both a payment and statement of account are received by the Collective after the due date.

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