

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

In the Matter of)	
)	
)	
DETERMINATION OF ROYALTY RATES)	Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND)	(2016-2020)
RECORDINGS AND EPHEMERAL)	
RECORDINGS (WEB IV))	
)	

PROPOSED RATES AND TERMS OF iHEARTMEDIA, INC.

Pursuant to 37 C.F.R. § 351.4(b)(3), iHeartMedia, Inc. (“iHeartMedia”) proposes the rates and terms set forth herein for eligible nonsubscription transmissions (“Webcast Transmissions”) together with the making of ephemeral recordings necessary to facilitate Webcast Transmissions, under the statutory license set forth in 17 U.S.C. §§ 112(e) and 114, during the period January 1, 2016 through December 31, 2020.

Pursuant to 37 C.F.R. § 351.4(b)(3), iHeartMedia reserves the right to revise its proposed rates and terms at any time during the proceeding up to, and including, the filing of its proposed findings of fact and conclusions of law.

PER-PERFORMANCE RATES

For all Webcast Transmissions (except Exempt Simulcast Transmissions, as defined below) and related ephemeral recordings by commercial webcasters (as defined in 37 C.F.R. § 380.2), iHeartMedia proposes the following royalty rate per performance:

\$0.0005, for each year of the 2016-2020 rate period.

iHeartMedia requests that the royalty payable under 17 U.S.C. § 112(e) for the making of ephemeral recordings used by the licensee solely to facilitate transmissions for which it

pays royalties as provided above shall be included within, and constitute five percent of, such royalty payments.

iHeartMedia notes that currently pending before the United District Court for the Western District of Virginia in *WTGD1 105.1 FM v. SoundExchange, Inc.*, No. 5:14-cv-00015-MFU-JCH, is the question whether certain nonsubscription simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts within a radius of 150 miles from the site of the radio broadcast transmitter (referred to herein as “Exempt Simulcast Transmissions”) are exempt from paying statutory royalties. iHeartMedia proposes to treat Exempt Simulcast Transmissions as other Webcast Transmissions for royalty purposes until such time as a court in that case issues a final and non-appealable ruling that there is no legal obligation to do so, at which time iHeartMedia proposes that a rate of zero shall apply, both prospectively and retroactively (through a refund mechanism) to all Exempt Simulcast Transmissions made during the 2016-2020 period.

OTHER TERMS

iHeartMedia requests that the terms currently set forth in 37 C.F.R. § 380 be continued, subject to the following changes set forth below.

1. Amend § 380.10(b) by deleting the period at the end of that section and adding the following subsection (b)(1):

(b)(1) Notwithstanding the foregoing, Broadcasters need not comply with the statutory license conditions of 17 U.S.C. § 114(d)(2)(C)(i) and (ii), and with the statutory six-month limitation on retention of ephemeral recordings of § 112 in connection with Broadcast Retransmissions, provided that:

(i) with respect to § 114(d)(2)(C)(i), Broadcasters may not consecutively transmit more than one-half (1/2) of the sound recordings on an entire album of sound recordings, including a compilation album (or, in the case of any set or compilation of phonorecords lawfully distributed together as a single unit for sale in the United States, more than one-half (1/2) of the

sound recordings on any particular single record unit that constitutes a part of the set or compilation of phonorecords concerned), provided that the transmission of any given musical work reasonably classified as classical, jazz, oldies, classic rock, or other similar format other than current “hit” music formats may be rendered in its entirety, and provided further that Broadcasters may not engage in any programming practice designed to evade this limitation; and

(ii) with respect to § 114(d)(2)(C)(ii), Broadcasters may not publish a written or visual advance program schedule, including for streamed archived programming, that specifies that a particular artist or artists or particular sound recordings will be featured at a specified future time, except that Broadcasters transmitting programming reasonably classified as classical, jazz, oldies, classic rock, or other similar format other than current “hit” music formats may publish a schedule of applicable music programming for regularly scheduled programs, documentaries, retrospectives, archival programs, and the like.

This added language ensures that Broadcasters do not need to alter the content of their radio broadcasts simply because they have elected to simulcast those broadcasts over the Internet.

2. Amend the definition of “*Broadcast Retransmissions*” in § 380.11 by adding to the end of that paragraph the following:

For the further avoidance of doubt, a Broadcast Retransmission does not cease to be a Broadcast Retransmission because the Broadcaster has replaced programming in its retransmission of the radio broadcast, so long as a majority of the programming in any given hour of the radio broadcast has not been replaced.

This language addresses the present technical capability of a Broadcaster engaged in simulcasting over the Internet to replace songs from the radio broadcast with different songs. This language continues to classify simulcasts as Broadcast Retransmissions so long as the majority of the sound recordings in the radio broadcast continue to be transmitted as part of the simulcast.

3.a. Amend § 380.10(b) by adding as § 380.10(b)(2) the following:

(b)(2) Notwithstanding the foregoing, with respect to Broadcaster Webcasts, Broadcasters need not comply with the statutory six-month limitation on retention of ephemeral recordings of § 112 and, furthermore:

(i) with respect to § 114(d)(2)(C)(i), the sound recording performance complement shall be defined to mean the performance of not more than (A) three (3) different selections from any one (1) phonorecord lawfully distributed for public performance or sale during any one (1)-hour period on a particular channel or station; or (B) four (4) different selections of sound recordings by the same featured recording artist or from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale during any one (1)-hour period on a particular channel or station; provided that no more than three (3) such selections are transmitted consecutively;

(ii) with respect to § 114(d)(2)(C)(ii), the Broadcaster Webcast may include, prior the transmission of a particular sound recording, an announcement of the title of such upcoming sound recording, the title of the album containing such sound recording, or the name of the artist featured on such sound recording, provided (A) such announcement is delivered solely by means of a DJ-style oral overlay announcement in a manner consistent with typical AM/FM radio programming practices in effect as of the promulgation of this regulation; and (B) the Broadcaster shall not provide or authorize, or undertake affirmative acts that enable or facilitate third parties to provide, any application or service to detect such oral announcements for any purpose other than delivery of the Broadcaster Webcast. For clarity, such prohibited purposes include using such oral announcements to enable listeners to select a particular sound recording to be transmitted to them.

3.b. Amend § 380.1(b) by adding at the end of this section the following:

Notwithstanding the foregoing, Commercial Webcasters need not comply with the statutory six-month limitation on retention of ephemeral recordings of § 112 and, furthermore:

(i) with respect to § 114(d)(2)(C)(i), the sound recording performance complement shall be defined to mean the performance of not more than (A) three (3) different selections from any one (1) phonorecord lawfully distributed for public performance or sale during any one (1)-hour period on a particular channel or station; or (B) four (4) different selections of sound recordings by the same featured recording artist or from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale during any one (1)-hour period on a particular channel or station; provided that no more than three (3) such selections are transmitted consecutively;

(ii) with respect to § 114(d)(2)(C)(ii), the Commercial Webcast may include, prior the transmission of a particular sound recording, an announcement of the title of such upcoming sound recording, the title of the album containing such sound recording, or the name of the artist featured on such sound recording, provided (A) such announcement is delivered solely by means of a DJ-style oral overlay announcement in a manner consistent with typical AM/FM radio programming practices in effect as of the promulgation of this regulation; and (B) the Commercial Webcaster shall not provide or authorize, or undertake affirmative acts that enable or facilitate third parties to provide, any application or service to detect such oral announcements for any purpose other than delivery of the Commercial Webcast. For clarity, such prohibited purposes include using such oral announcements to enable listeners to select a particular sound recording to be transmitted to them.

This new language gives providers of custom, non-interactive webcasts — whether Broadcaster Webcasts or Commercial Webcasts — greater flexibility to provide promotional value to rights holders.

4.a. Amend § 380.4(e) as shown below:

(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,~~ equal to the underpayment penalty in 26 U.S.C. § 6621 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.

4.b. Amend § 380.13(e) as shown below:

(e) *Late fees.* A Broadcaster shall pay a late fee for each instance in which any statement of account or any report of use is not received by the Collective in compliance with applicable regulations by the due date. The amount of the late fee shall be equal to the underpayment penalty in 26 U.S.C. § 6621 and shall be applied to the ~~1.5% of a late payment, or 1.5% of to the payment associated with a late statement of account or report of use, per month, or the highest lawful rate, whichever is lower.~~ The late fee shall accrue from the date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Broadcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

This language replaces the existing late fee of 1.5 percent per month with the underpayment penalty set forth in 26 U.S.C. § 6621(a)(2), (b), (c), which is an annual rate equal to the federal short-term rate as determined by the Secretary of the Treasury plus three (3) percentage points or plus five (5) percentage points where the late payment exceeds \$100,000.

5. Amend § 380.6(g) and § 380.15(g) as shown below (the bracketed terms identify text that would differ between the two sections):

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was ~~an~~ a net underpayment (i.e., underpayments less any overpayments) of 10% or more, in which case the [Licensee / Broadcaster] shall, in addition to paying the amount of any net underpayment, bear the reasonable costs of the verification procedure. In the event it is finally determined that there was a net overpayment, the [Licensee / Broadcaster] may deduct the amount of that net overpayment, plus interest calculated at the late payment rate in [§ 380.4(e) / § 380.13(e)], from its next payment(s) due to the Collective until the full amount of the overpayment has been recouped.

The added language recognizes that an audit may reveal overpayments as well as underpayments, clarifies that the costs of the audit will be shifted only if the *net* underpayment was 10 percent or more, and provides the Licensee or Broadcaster with the ability to recover through deductions against future amounts due any net overpayments discovered in the audit.

6. Add as § 380.4(i) and § 380.13(k) the following (the bracketed terms identify text that would differ between the two sections):

(_) *Overpayments.* If the [Licensee / Broadcaster] determines, within three (3) calendar years of paying to the Collective a monthly amount due, that the [Licensee / Broadcaster] overpaid the royalty payments due under [§ 380.3 / § 380.12], the [Licensee / Broadcaster] may reduce the royalty payments due on its next monthly payment(s) by the amount of the overpayment, plus interest calculated at the late payment rate in [§ 380.4(e) / § 380.13(e)], until the full amount of the overpayment has been recouped. The [Licensee / Broadcaster] shall include in its statement

of account for each month in which it is deducting amounts to recover an overpayment such information as is necessary to calculate the amount of the overpayment.

This language gives Licensees and Broadcasters the ability to recover overpayments of royalties due.

7. Add as § 380.9 and § 380.18 the following (the bracketed terms identify text that would differ between the two sections):

§ 380.____ Notice and Cure

For any material breach of these regulations by a [Licensee / Broadcaster] that the Collective intends to assert in any way against the [Licensee / Broadcaster], the Collective shall first provide notice of such material breach to the [Licensee / Broadcaster] by certified mail, and the [Licensee / Broadcaster] shall have 30 days from the receipt of such notice of material breach to cure such material breach.

This requires the Collective to provide notice to Licensees and Broadcasters of asserted breaches of the terms of the statutory license and provides Licensees and Broadcasters a period in which to cure the alleged breach without penalty.

Respectfully submitted,



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