

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, DC**

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR PERFORMANCE OR DISPLAY OF
NONDRAMATIC MUSICAL WORKS AND
PICTORIAL, GRAPHIC, AND SCULPTURAL
WORKS BY PUBLIC BROADCASTING
ENTITIES (PB III)**

**Docket No. 16-CRB-0002-PBR
(2018-2022)**

**JOINT PROPOSAL OF BROADCAST MUSIC, INC. AND
NATIONAL ASSOCIATION OF COLLEGE AND UNIVERSITY BUSINESS OFFICERS**

Broadcast Music, Inc. (“BMI”) and the National Association of College and University Business Officers (“NACUBO”) hereby submit this joint proposal for statutory license fees to be paid to BMI by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc. (“NPR”) for the performance of copyrighted musical works in BMI’s repertory. BMI and NACUBO also jointly propose a revised version of 37 C.F.R. § 381.5 which applies to the performance of copyrighted, published nondramatic musical compositions by noncommercial radio stations that are licensed to colleges or universities. This proposal covers the years 2018 through 2022.

BMI licenses, on a non-exclusive basis, the public performing right in approximately 10.5 million non-dramatic musical works on behalf of its over 700,000 affiliated songwriters, composers and publishers, including thousands of foreign works through BMI’s reciprocal licensing agreements with over 90 foreign performing right organizations.

Founded in 1962, NACUBO is a membership organization that represents more than 2,100 colleges and universities in the United States, with a mission to advance the economic viability, business practices and support for higher education institutions in fulfillment of their missions. To obtain further input and guidance during negotiations that led to this joint proposal, NACUBO consulted with the American Council on Education (“ACE”), the nation’s most visible and influential higher education organization, representing more than 1,700 colleges and universities. Many of the college and university members of NACUBO operate noncommercial radio stations that are not affiliated with NPR, and these members rely on the Section 118 license in connection with the musical compositions included in their radio broadcasts.

BACKGROUND

Shortly after the Copyright Revision Act of 1976 became effective (on January 1, 1978), the Copyright Royalty Tribunal (“CRT”) held proceedings for the determination of compulsory license fees to be paid by public broadcasting entities for the performance of copyrighted musical works, pursuant to 17 U.S.C. § 118. Among those public broadcasting entities were noncommercial educational radio stations licensed to colleges or universities that were not members of NPR. *See generally*, 43 Fed. Reg. 25,069 (June 8, 1978). In 1978, the CRT fixed the annual fee to be paid to BMI by college radio stations which are not affiliated with NPR (“College Radio Stations”) for their performances of copyrighted musical works in BMI’s repertory. *See* 43 Fed. Reg. 25,071, 25,073; 37 C.F.R. §§ 304.5, 304.10 (1978). That CRT determination was effective through December 31, 1982.

In accordance with the 5-year adjustment provision in the statute, in 1982, 1987, 1992, 1997 and 2002, BMI and ACE made joint proposals to the CRT and its successor, the Librarian

of Congress, to adjust the BMI blanket license fees for College and University Radio Stations. These proposals were adopted by the CRT and the Librarian of Congress (the “Librarian”).¹

On January 9, 2006, the Copyright Royalty Judges (the “Judges”), designated by Congress as the successors to the CRT and Librarian of Congress to handle Section 118 royalties, published a notice to set rates for the five-year term from January 1, 2008 through December 31, 2012. *See* 71 Fed. Reg. 1453-1454 (January 9, 2006). BMI and ACE, with input and approval from NACUBO, submitted a joint proposal to the Judges on December 22, 2006 to continue the royalty fee previously set with annual cost-of-living adjustments in accordance with the Consumer Price Index for the years 2008 through 2012. Additionally, BMI and ACE also proposed that 37 C.F.R. § 253.5 be revised to clarify the scope of the regulation. This proposal was adopted by the Judges on November 30, 2007 (72 Fed. Reg. 67646).

In 2011, BMI and ACE, with input and approval from NACUBO, submitted a joint proposal to the Judges, creating a tiered system. The tiered fees are based on the number of full-time students enrolled, with the exception that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power (“ERP”) of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population. This proposal was adopted by the Judges on November 29, 2012 (77 Fed. Reg. 71105).

¹On December 17, 1993, Congress abolished the CRT. Copyright Royalty Tribunal Reform Act of 1993 (“CRT Reform Act”), Pub. L. No. 103-198, 107 Stat. 2304. Pursuant to the CRT Reform Act, Congress directed the Copyright Office (the “Office”) and the Librarian to adopt the rules and regulations of the CRT found in chapter 3 of 37 C.F.R.; the Office subsequently reissued the CRT regulations on December 22, 1993. 17 U.S.C. § 802(d); 58 Fed. Reg. 67690 (December 22, 1993). The Office also renumbered former 37 C.F.R. § 304.5 (which established terms and rates of license agreements for College Radio Stations) as 37 C.F.R. § 253.5, and renumbered 37 C.F.R. § 304.10 (which calls for annual cost-of-living adjustments to certain rates paid by College Radio Stations) as 37 C.F.R. § 253.10. *See* 59 Fed. Reg. 23964 (May 9, 1994).

On January 5, 2016, the Judges published a notice in the above-captioned proceeding to set rates for the five-year term from January 1, 2018 through December 31, 2022. *See* 81 Fed. Reg. 256.

THE BMI-NACUBO JOINT PROPOSAL

BMI and NACUBO hereby propose BMI blanket license fees for the covered stations for the five year period 2018 through 2022, continuing the tiered approach in 37 C.F.R. § 381.5(c)(2)(i). A chart of the proposed rates embodying the BMI-NACUBO joint proposal is attached hereto as Appendix A. ACE supports the proposal as well. No revisions to the text of the governing regulation, *i.e.*, 37 C.F.R. § 381.5, are proposed.²

BMI and NACUBO propose these fees as the BMI license fee for all College Radio Stations, which the Judges may adopt and incorporate within 37 C.F.R. § 381.5. Such adoption in the regulations would make further proceedings, including hearings, unnecessary for these stations insofar as their performance of BMI music is concerned.³

The Judges have statutory authority to make revisions to terms as well as rates pursuant to 17 U.S.C. § 801(b)(1). BMI and NACUBO have no objection to the proposed changes to 37 C.F.R. § 381.5 being printed and made available to the public in the form of a Federal Register notice.

² For example, BMI and NACUBO propose that 37 C.F.R. § 381.5(c)(2)(ii) remains unchanged, thus providing that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power of 100 Watts or less, regardless of the size of the student population.

³ BMI and NACUBO submit a joint proposal, rather than entering into a voluntary agreement, because NACUBO does not have the power to bind all College Radio Stations to an agreement.

CONCLUSION

BMI and NACUBO request that the Judges adopt this joint proposal for a modification of fees to be paid by College Radio Stations pursuant to Section 118 of the Copyright Act. BMI and NACUBO request that 37 C.F.R. § 381.5 be amended with the new rates.

Respectfully submitted,

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APPENDIX A

	Number of full-time students	2018	2019	2020	2021	2022
Level 1	<1,000	\$352	\$359	\$366	\$373	\$380
Level 2	1,000-4,999	407	415	423	431	440
Level 3	5,000-9,999	557	568	579	591	603
Level 4	10,000-19,999	722	736	751	766	781
Level 5	20,000 +	908	926	945	964	983

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2016, a copy of the foregoing Joint Proposal of Broadcast Music, Inc., and National Association of College and University Business Officers was sent by overnight delivery to the following:

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