

§ 261.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) For the period October 28, 1998, through December 31, 2002, royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114(d)(2), and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial Broadcaster Performance Royalty.

(i) For simultaneous Internet retransmissions of over-the-air AM or FM broadcasts by the same radio station, a non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(ii) For other Internet transmissions, including up to two side channels of programming consistent with the mission of the station, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(iii) For Internet transmissions on other side channels of programming, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(b) Estimate of Performance. Until December 31, 2002, a Webcaster, Commercial Broadcaster, or Non-CPB, Non-Commercial Broadcaster may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of transmissions or retransmissions of radio station programming reasonably classified as news, business, talk or sports, and 12 performances per hour in the case of transmissions or retransmissions of all other radio station programming).

(c) *Webcaster and Broadcaster Ephemeral Recordings Royalty.* For the making of any number of ephemeral recordings to facilitate the Internet transmission of a sound recording, each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster shall pay a section 112(e) royalty equal to 8.8% of their total performance royalty.

(d) *Business Establishment Ephemeral Recordings Royalty.* For the making of any number of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv), a Business Establishment Service shall pay a section 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program,

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(e) *Minimum fee.* (1) Each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster licensed to make eligible digital transmissions and/or ephemeral recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall pay a minimum fee of \$500 for each calendar year, or part thereof, in which it makes such transmissions or recordings.

(2) Each Business Establishment Service licensed to make ephemeral recordings pursuant to a license under 17 U.S.C. 112(e) shall pay a minimum fee of \$10,000 for each calendar year, or part thereof, in which it makes such recordings.

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

(a) A Licensee shall make the royalty payments due under § 261.3 to the Receiving Agent. If there are more than