

or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (e)(1)(i) through (vii) of this section.

(2) Gross revenues shall include such payments as set forth in paragraphs (e)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (e)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 382.3 Terms for making payment of royalty fees.

(a) *Payment to the Collective.* All royalty payments shall be made to the Collective designated for the collection and distribution of royalties for the 2008–2012 time period, which shall be SoundExchange.

(b) *Timing of payment.* Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to copyright owners and performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those copyright own-

ers, performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in §370.2 of this chapter.

(2) If the Collective is unable to locate a copyright owner or performer entitled to a distribution of royalties under paragraph (c)(1) of this section within 3 years from the date of payment by a Licensee, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

§ 382.4 Confidential information and statements of account.

(a) For purposes of this subpart, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt preexisting subscription service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§382.5 and 382.6.

(b) Nonexempt preexisting subscription services shall submit monthly statements of account on a form provided by the Collective and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

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(1) Those employees, agents, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(3) Copyright owners and performers whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(3) are the monthly statements of account that accompany royalty payments.

(e) The Collective or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the Collective or such person.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those

interested parties entitled to receive such fees.

§ 382.5 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Royalty Board, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the Collective.