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

(a) Payment to the Collective. A Licensee shall make the royalty payments due under §380.3 to the Collective.

(b) Designation of the Collective. (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under §380.3 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in this paragraph (b)(2), such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(ii) The Copyright Royalty Judges shall publish in the FEDERAL REGISTER within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) Monthly payments. A Licensee shall make any payments due under §380.3 on a monthly basis on or before the 45th day after the end of each month for that month. All monthly payments shall be rounded to the nearest cent.

(d) Minimum payments. A Licensee shall make any minimum payment due under §380.3(b) by January 31 of the applicable calendar year, except that payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(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.

(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:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or corporation;

(ii) A partner or delegate, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation.

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(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 dili-
geance.

(g) Distribution of royalties. (1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are enti-
tled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Ow-
ers, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Col-
lective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the infor-
mation provided under the reports of use requirements for Licensees con-
tained in § 370.4 of this chapter.

(2) If the Collective is unable to lo-
cate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (g)(1) of the section within 3 years from the date of pay-
ment by a Licensee, such royalties shall be handled in accordance with § 380.8.

(h) Retention of records. Books and 
records of a Licensee and of the Collec-
tive relating to payments of and dis-
tributions of royalties shall be kept for a period of not less than the prior 3 cal-
endar years.

§ 380.5 Confidential Information.

(a) Definition. For purposes of this subpart, “Confidential Information” shall include the statements of account and any information contained therein, including the amount of royalty pay-
ments, and any information pertaining to the statements of account reason-
ably designated as confidential by the Licensee submitting the statement.

(b) Exclusion. Confidential Information shall not include documents or in-
formation that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) Use of Confidential Information. In no event shall the Collective use any Confidential Information for any pur-
pose other than royalty collection and distribution and activities related di-
rectly thereto.

(d) Disclosure of Confidential Informa-
tion. Access to Confidential Informa-
tion shall be limited to:

(1) Those employees, agents, attor-
neyes, consultants and independent con-
tractors of the Collective, subject to an appropriate confidentiality agreement, 
who are engaged in the collection and distribution of royalty payments here-
under and activities related thereto, for the purpose of performing such du-
ties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate con-
fidentiality agreement, who is author-
ized to act on behalf of the Collective with respect to verification of a Li-
censee’s statement of account pursuant to § 380.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.7;

(3) Copyright Owners and Performers, including their designated agents, 
whose works have been used under the statutory licenses set forth in 17 U.S.C. 
112(e) and 114 by the Licensee whose Confidential Information is being sup-
plied, subject to an appropriate confiden-
tiality agreement, and including those employees, agents, attorneys, 
consultants and independent contrac-
tors of such Copyright Owners and Per-
formers and their designated agents, subject to an appropriate confiden-
tiality agreement, for the purpose of performing their duties during the or-
dinary course of their work and who re-
quire access to the Confidential Informa-
tion; and

(4) In connection with future pro-
cedings under 17 U.S.C. 112(e) and 114 before the Copyright Royalty Judges, 
and under an appropriate protective order, attorneys, consultants and other 
authorized agents of the parties to the proceedings or the courts.

(e) Safeguarding of Confidential Infor-
mation. The Collective and any person identified in paragraph (d) of this sec-
tion shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable stand-
ard of care, but no less than the same