shall subject the body or institution to the remedies for infringement of copyright.

PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

Subpart A—Preexisting Subscription Services

§ 382.1 General.
(a) This subpart establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this subpart, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this subpart, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For the purposes of this subpart, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

§ 382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2008, and continuing through December 31, 2011, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2012, and continuing through December 31, 2012, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.5% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year. The annual advance payment shall be non-refundable, but the royalties due and payable for a given year or any month...
§ 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 owners, 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