§ 382.13 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 § 382.12 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 § 382.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents,

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(ii) The “Reference Channels” are Internet webcast channels offered by the Licensee that directly correspond to channels offered on the Licensee’s SDARS that are capable of being received on all models of Sirius radio, all models of XM radio, or either or both, and on which the programming consists primarily of music.

(iii) The Licensee timely provides the relevant information required by § 382.13(h).

(3) A Direct License Share adjustment as described in paragraph (d) of this section is available to a Licensee only if—

(i) The Reference Channels constitute a large majority of the music channels offered on the Licensee’s SDARS and are generally representative of the music channels offered on the Licensee’s SDARS; and

(ii) The Licensee timely provides the relevant information required by § 382.13(h).

(4) No performance shall be credited as an Internet Performance of a Directly-Licensed Sound Recording under this section if that performance is separately credited as an Internet Performance of a Pre-1972 sound recording under paragraph (c)(1) of this section.

(e) Pre-1972 Recording Share. The percentage of monthly Gross Revenues royalty fee specified in paragraph (a) of this section may be reduced by a percentage as set forth in this paragraph (referred to herein as the “Pre-1972 Recording Share”).

(1) Subject to paragraph (e)(3) of this section, for each month, the Pre-1972 Recording Share is the result of dividing the Internet Performances of Pre-1972 Sound Recordings on the Reference Channels by the total number of Internet Performances of all sound recordings on the Reference Channels.

(2) For purposes of paragraph (e)(1) of this section:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(ii) The “Reference Channels” are Internet webcast channels offered by the Licensee that directly correspond to channels offered on the Licensee’s SDARS that are capable of being received on all models of Sirius radio, all models of XM radio or both, and on which the programming consists primarily of music.

(iii) The Licensee timely provides the relevant information required by § 382.13(h).

(3) A Pre-1972 Recording Share adjustment as described in paragraph (e) of this section is available to a Licensee only if—

(i) The Reference Channels constitute a large majority of the music channels offered on the Licensee’s SDARS and are generally representative of the music channels offered on the Licensee’s SDARS; and

(ii) The Licensee timely provides the relevant information required by § 382.13(h).

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entitled to receive royalties under 17 U.S.C. 112(e) or 114.

(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 paragraph (b)(2) of this section, 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 that have themselves authorized the Collective.

(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 §382.12 on a monthly basis on or before the 45th day after the end of each month for that month. All payments shall be rounded to the nearest cent.

(d) 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, each for any payment or statement of account, or either of them received by the Collective after the due date. Late fees shall accrue from the due date until payment and the statement of account are received by the Collective.

(e) Statements of account. Any payment due under §382.12 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 payments;

(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 signature of a duly authorized officer or representative of the Licensee;

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

(5) The date of signature;

(6) The title or official position held in relation to the Licensee 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 officer or representative of the Licensee, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(f) 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 §370.4 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (f)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with §382.17.

(g) Retention of records. Books and records of a Licensee and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

(h) Notification of exclusions. (1) As a condition to a Licensee’s taking a Direct License Share adjustment as described in §382.12(d), by no later than the due date for the relevant payment
under paragraph (c) of this section, the Licensee must provide the Collective a list of each Copyright Owner from which the Licensee claims to have a direct license of rights to Directly-Licensed Recordings that is in effect for the month for which the payment is made, and of each sound recording as to which the Licensee takes such an adjustment (identified by featured artist name, sound recording title, and International Standard Recording Code (ISRC) number or, alternatively to the ISRC, album title and copyright owner name). Notwithstanding §382.14, the Collective may disclose such information as reasonably necessary for it to confirm whether a claimed direct license exists and claimed sound recordings are properly excludable.

(2) As a condition to a Licensee’s taking a Pre-1972 Recording Share adjustment as described in §382.12(e), by no later than the due date for the relevant payment under paragraph (c) of this section, the Licensee must provide the Collective a list of each Pre-1972 Recording as to which the Licensee takes such an adjustment (identified by featured artist name, sound recording title, and International Standard Recording Code (ISRC) number or, alternatively to the ISRC, album title and copyright owner name).

§382.14 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 payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Exclusion. Confidential Information shall not include documents or information 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 purpose other than royalty collection and distribution and activities related directly thereto.

(d) Disclosure of Confidential Information. Access to Confidential Information shall be limited, subject to an appropriate confidentiality agreement, to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, who is authorized to act on behalf of the Collective with respect to verification of a Licensee’s statement of account pursuant to §382.15 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to §382.16;

(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 supplied, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information;

(4) In connection with future proceedings 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 Information. The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same