§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) Royalty rates. Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112(e) to facilitate such transmissions during the License Period, are as follows. Each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, the greater of:
   (i) 15% of Revenue, or
   (ii) The following monthly minimum payment per Subscriber to the Service of such Licensee—
       (A) From inception through 2006: $0.0075
       (B) 2007: $0.0075
       (C) 2008: $0.0075
       (D) 2009: $0.0125
       (E) 2010: $0.0150
       (F) 2011: $0.0155
       (G) 2012: $0.0159
       (H) 2013: $0.0164
       (I) 2014: $0.0169
       (J) 2015: $0.0174 and

(2) For Bundled Contracts, the greater of:
   (i) 15% of Revenue allocated to reflect the objective value of the Licensee’s Service, or
   (ii) The following monthly minimum payment per Subscriber to the Service of such Licensee:
       (A) From inception through 2006: $0.0220
       (B) 2007: $0.0220
       (C) 2008: $0.0220
       (D) 2009: $0.0220
       (E) 2010: $0.0250
       (F) 2011: $0.0258
       (G) 2012: $0.0265
       (H) 2013: $0.0273
       (I) 2014: $0.0281
       (J) 2015: $0.0290

(b) Minimum fee. Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars ($100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to the section 112(e) and 114 statutory licenses, but payable pursuant to the applicable regulations for all years 2007 and earlier. Such fee shall be recoupable and credited against royalties due in the calendar year in which it is paid.

(c) Ephemeral recordings. The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions during the License Period for which it pays royalties as and when provided in this part shall be included
§ 384.2 Terms for making payment of royalty fees.

(a) Terms in general. Subject to the provisions of this section, terms governing timing and due dates of royalty payments to the Collective, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees’ confidential information, distribution of royalties by the Collective, unclaimed funds, designation of the Collective, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services in 37 CFR part 382, subpart B of this chapter, for the license period 2007–2012. For purposes of this section, the term “Collective” refers to the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period through 2015, the sole Collective is SoundExchange, Inc.

(b) Reporting of performances. Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) Applicable regulations. To the extent not inconsistent with this part, all applicable regulations, including part 370 of this chapter, shall apply to activities subject to this part.

AUTHORITY: 17 U.S.C. 112(e), 801(b)(1).
SOURCE: 73 FR 6199, Mar. 27, 2008, unless otherwise noted.

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

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