"simulcasts" (i.e., duplicates) a primary stream or another multicast stream of the same station that the cable system is carrying. However, simulcast streams must be reported on the Statement of Accounts.

(4) Multicast streams of digital broadcast programming shall not be subject to the 3.75% fee or the syndicated exclusivity surcharge.

* * * * *

Dated: August 10,2010

Marybeth Peters,

Register of Copyrights.

Dated: August 10, 2010

James H. Billington,

The Librarian of Congress.

[FR Doc. 2010–22814 Filed 9–16–10; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2005–1 CRB DTRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Remand order.

SUMMARY: The Copyright Royalty Judges are announcing their determination regarding the minimum fee to be paid by Noncommercial Webcasters under two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, in response to an order of remand by the United States Court of Appeals for the District of Columbia Circuit.

DATES: Effective September 17, 2010.

ADDRESSES: The remand order also is published on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/orders/2010/amendment-remand-order-6–30–10.pdf*.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: On May 1, 2007, the Copyright Royalty Judges ("Judges") published in the **Federal Register** their determination of royalty rates and terms under the statutory licenses under Sections 112(e) and 114 of the Copyright Act, title 17 of the United States Code, for the period 2006 through 2010 for the digital public performance of sound recordings by means of eligible nonsubscription transmission or a transmission by a new subscription service. 72 FR 24084. In *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748 (DC Cir. 2009), the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") affirmed the Judges' determination in the main but remanded to the Judges the matter of setting the minimum fee to be paid by both Commercial Webcasters and Noncommercial Webcasters under Sections 112(e) and 114 of the Copyright Act. *Id.* at 762, 767. No rules or procedures applied to a proceeding that is remanded, and the Judges adopted an Interim Final Rule to govern. 37 CFR 351.15. Pursuant to this Rule, Intercollegiate Broadcasting System, Inc. ("IBS") and SoundExchange, Inc. ("SoundExchange") presented proposals for the conduct and schedule of the remand proceeding, including settlement negotiations, written direct statements with proposed rates, discovery and an evidentiary hearing. By order dated October 23, 2009, the Judges established a period commencing November 2, 2009, and concluding on December 2, 2009, for the parties to negotiate and submit a settlement of the minimum fee issue that is the subject of the remand. Absent settlement, the parties were directed to file written direct statements by January 11, 2010.

On December 2, 2009, SoundExchange, Inc. and the Digital Media Association ("DiMA") submitted a settlement regarding the statutory minimum fee to be paid by Commercial Webcasters. Subsequently, the Judges published for comment the proposed change in the rule necessary to implement that settlement pursuant to the order of remand from the DC Circuit. 74 FR 68214 (December 23, 2009). The Judges received one comment from IBS. The Final Rule for the minimum fee to be paid by Commercial Webcasters was published. 75 FR 6097 (February 8, 2010).

Following the filing of Written Direct Statements by IBS and SoundExchange, on January 20, 2010, the Judges established the discovery schedule on the remaining issue of the minimum fee for Noncommercial Webcasters. Following discovery, the hearing was held May 18, 2010. SoundExchange presented the testimony of W. Tucker McCrady, associate counsel, digital legal affairs, Warner Music Group ("WMG"), and Barrie Kessler, chief operating officer, SoundExchange. It also offered Webcaster Settlement Acts of 2008 and 2009 agreements between SoundExchange and College Broadcasters, Inc. ("CBI") for noncommercial educational webcasters, National Association of Broadcasters ("NAB") for broadcasters, Sirius XM Radio, Inc. ("Sirius XM") for satellite services and DiMA for commercial webcasters. 5/18/10 Tr. at 13 (McCrady). IBS presented the testimony of Frederick J. Kass, Jr., John E. Murphy and Benjamin Shaiken. 5/18/10 Tr. at 62 and 67 (Kass). The testimony of Mr. Kass was that IBS supported a different rate proposal than the one filed. When this different rate proposal was not timely filed, the Judges ordered that it be filed by June 1, 2010. 5/18/10 Tr. at 98 (Kass). The IBS' Restated Rate Proposal was filed June 1, 2010.

Mr. McCrady testified that WMG enters voluntary licenses for commercial webcasters. A negotiated license for the full catalogue must generate at least payments of $25,000. 5/18/10 Tr. at 25 (McCrady). The lowest commercial minimum fee is 20% of revenue. A smaller revenue stream would not justify the time and resources WMG would need to devote to evaluating, negotiating, implementing and monitoring an agreement. 5/18/10 Tr. at 20 (McCrady). Noncommercial Webcasters use the statutory license, because they do not generate enough revenue to WMG to support negotiating a license. SX Remand Trial Ex. 1 at 6 (McCrady).

The CBI agreement has the rates and terms for noncommercial educational webcasters, the same group that IBS represents in this proceeding. 5/18/10 Tr. at 71 (Kass). It has a minimum fee of $500 per year per station or channel and a usage rate of $500 per channel for streaming a noncommercial educational service up to 159,400 aggregate tuning hours ("ATH"). 5/18/10 Tr. at 14 (McCrady). The SoundExchange proposed minimum fee is $500 per station or channel. 5/18/10 Tr. at 14 (McCrady). The proposed minimum fee is fully recoupable against royalty fees owed and this feature reduces transaction costs for both parties. 5/18/10 Tr. at 21, 22 (McCrady). IBS says the average annual revenue of its member stations is $9,000. 5/18/10 Tr. at 20 (McCrady) and 5/18/10 Tr. at 71 (Kass). So, the proposed fee is 6% of revenue, a large discount for Noncommercial Webcasters off the negotiated license agreements for commercial webcasters. 5/18/10 Tr. at 20 (McCrady). All users of sound recordings should be licensed and pay something. It is an important educational message for students to learn the value of recorded music and to pay for it. 5/18/10 Tr. at 23 (McCrady). From the first webcasting proceeding, the standard minimum fee

for statutory licenses has been $500, on the theory that the minimum fee should be sufficient to cover at least the costs of administering the license. SX Remand Trial Ex. 1 at 7 (McCrady).

Ms. Kessler testified about administering the royalties paid under the statutory license. Of the approximately 730 webcasting services paying royalties in 2009, 363 are noncommercial. The noncommercial royalties are less than 1% of the total webcasting royalties paid for 2009. 5/18/10 Tr. at 34 (Kessler). Of the noncommercial services, 305 paid only the minimum fee of $500, and the remaining 58 paid more for exceeding the ATH cap or streaming multiple channels or stations. These payments are pursuant to the royalty minimum fee that is the subject of this remand proceeding, 5/18/10 Tr. at 42 (Kessler), and they demonstrate that noncommercial services are able and willing to pay the minimum fee. 5/18/10 Tr. at 33 (Kessler). SoundExchange does not regularly track the administrative costs on a licensee, station or channel basis. Such costs vary widely based on the quality of the data provided by the service. For this proceeding, SoundExchange estimated its administrative costs. The average per channel or station cost for webcasters for 2008 is $803. 5/18/10 Tr. at 36 (Kessler). The cost of administering the statutory license is greater than the revenue from noncommercial webcasters. 5/18/10 Tr. at 34 (Kessler). The CBI agreement for noncommercial educational webcasters, together with the NAB agreement, the Sirius XM agreement and the DiMA agreement all provide a similar minimum fee of $500, as SoundExchange proposes in this proceeding. All of these agreements were filed under the Webcaster Settlement Acts of 2008 and 2009, which permit agreements on the royalty rates under the statutory licenses. 5/18/10 Tr. at 13 (McCrady).

On June 1, 2010, IBS filed the restated rate proposal that Mr. Kass had supported in his testimony. The general principle of the proposal is that small noncommercial webcasters should pay only for the performances of music subject to the statutory license that they actually webcast. This principle is the same as the Judges used in the Final Determination to support the per performance metric for royalty rates, being more directly tied to the nature of the right being licensed. *See Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748, 760–61 (DC Cir. 2009). But contrary to this principle, the proposal then provides for a flat royalty rate and an exemption from recordkeeping and reporting requirements. Both the flat rate and the exemptions are inconsistent with a per performance royalty, which is based on the number of performances times the rate for each performance. The proposal was for the royalty rates to be paid by Noncommercial Webcasters (set by 37 CFR 380.3(a)(2)(i)) and not for the minimum fee, which is the subject of this remand proceeding. The proposed rate is $20 to $50 per annum, based on the number of aggregate tuning hours. The proposal did not include a minimum fee. 5/18/10 Tr. at 76, 83–85 (Kass). Mr. Kass said no minimum fee should be paid. He said this discount is justified, because the small noncommercial educational webcasters are teaching students. IBS Remand Trial Ex. 1 at 2. The CBI agreement is available for use by IBS members and some of those members have joined the CBI agreement. 5/18/10 Tr. at 104, 105 (Kass). It proposes the $500 minimum fee per channel or station. 5/18/10 Tr. at 14 (McCrady).

Noncommercial Minimum Fee

The Final Determination discussed in Section IV.C.2 that most Noncommercial Webcasters qualified for a distinct segment of the marketplace that justified royalties lower than those paid by Commercial Webcasters. However, the Judges found that:

> the bare minimum that such services should have to pay is the administrative cost of administering the license. There is no evidence in the record to suggest that the submarket in which a Noncommercial Webcaster may reside would yield a different administrative cost for SoundExchange as compared to the administrative costs associated with Commercial Webcasters and SoundExchange, notably, makes no distinction between webcasters with respect to the $500 minimum fee. *Webcaster I* affirmed the notion that all webcasters–all Noncommercial Webcasters as well as all Commercial Webcasters–should pay the same minimum fee for the same license. 67 FR 45259 (July 8, 2002). We also find no basis in the record for distinguishing between Commercial Webcasters and Noncommercial Webcasters with respect to the administrative cost of administering the license. Therefore, we determine that a minimum fee of an annual non-refundable, but recoupable $500 minimum per channel or station payable in advance is reasonable over the term of this license.
>
> 72 FR 24084, 24099 (May 1, 2007) (footnotes omitted).

Ms. Kessler testified that the rough estimate of the average administrative cost for 2008 to SoundExchange per station or channel for webcasters is $803. All of the agreements filed pursuant to the Webcaster Settlement Acts of 2008 and 2009 have similar minimum fees as the proposed rate of $500 per station or channel. One includes the agreement for noncommercial educational webcasters (the CBI agreement), the same type of services as IBS, which seeks to pay no minimum fee. As found in the above quote from the Final Determination, a zero minimum fee is not supported by the evidence. IBS also asserts that administrative costs should be proportionately tied to the number of performances on a channel in a given year, but fails to establish any credible nexus. On the contrary, there are certain basic processes that must be utilized in administering the use of sound recordings by any Commercial or Noncommercial Webcaster of any size. Not surprisingly, at lesser levels of sound recording usage, the establishment and conduct of such administrative processes cannot simply be dispensed with. Indeed, smaller users may even result in larger proportionate administrative processing time than larger users. SoundExchange Remand Trial Ex. 1 at 3–4 (Kessler). See also *Order,* 72 FR 24084, 24096 n.37 (May 1, 2007).

The evidence presented in the remand proceeding supports a minimum fee of at least the same fee as adopted in the Final Determination. SoundExchange has now presented evidence on administrative costs that exceed this minimum. The agreements entered pursuant to the Webcaster Settlement Acts of 2008 and 2009 support that the industry accepts this minimum fee, which has substantially been in place since the first webcasting proceeding. IBS' position seeks to pay no minimum fee and indeed seeks to pay no or an extremely small royalty for use of copyrighted content. The Judges adopt the same minimum fee for Noncommercial Webcasters as stated in the Final Determination of an annual non-refundable, but recoupable $500 minimum per annum per channel or station payable in advance. 37 CFR 380.3(b)(2).

June 30, 2010.

So ordered.

James Scott Sledge,

Chief United States Copyright Royalty Judge.

William J. Roberts, Jr.,

United States Copyright Royalty Judge.

Stanley C. Wisniewski,

United States Copyright Royalty Judge.

Dated: July 21, 2010.

James Scott Sledge,

Chief, U.S. Copyright Royalty Judge.

James H. Billington,

Librarian of Congress.

[FR Doc. 2010–23264 Filed 9–16–10; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR part 36

RIN 2900–AM87

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA's) Loan Guaranty regulations concerning assistance to eligible individuals in acquiring specially adapted housing. These changes improve the readability of the regulations; provide further detail about longstanding program policies; and address legislation, policy changes, and a VA Office of the General Counsel legal opinion.

DATES: *Effective Date:* October 18, 2010.

FOR FURTHER INFORMATION CONTACT: William White, Acting Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9543. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Veterans and servicemembers with severe disabilities may be eligible under 38 U.S.C. chapter 21 for specially adapted housing (SAH) grants. In administering the SAH program, VA helps these eligible individuals to purchase, construct, or adapt a home that suits the individual's living needs. In a document published in the **Federal Register** on October 5, 2009 (74 FR 51103), VA proposed to amend regulations in 38 CFR part 36, subpart C, regarding assistance to certain disabled veterans in acquiring SAH, specifically §§ 36.4400 through 36.4410, which implement the SAH grant program.

As explained in the proposed rule, VA is amending these regulations for three reasons. First, VA believes the regulations should be written in a reader-focused style. Second, detailed guidance about program policies and a regulation written with an easy-to-follow organizational structure will help applicants and eligible individuals (and those acting on their behalf) understand program requirements. Third, substantive changes are necessary to implement recent legislation, policy decisions, and a VA General Counsel legal opinion. Pursuant to 38 U.S.C. 2101(d), the Secretary may prescribe regulations applicable to the SAH program. In revising these regulations, VA intends that applicants, eligible individuals, program participants, and other interested parties will be better informed about the legal requirements and Department policies that guide the administration of SAH grants.

The comment period for the proposed rule ended on December 4, 2009, and VA received two comments. The commenters expressed concern regarding VA's proposed use of the terminology "paraplegic housing grant or PH grant" for the grant authorized under 38 U.S.C. 2101(a). The commenters pointed out that the term is reflective of only one of the types of disabilities that make an individual eligible for this grant. Additionally, the commenters suggested that the use of the term "paraplegic" might result in an improper restriction on eligibility for SAH grants. The concern was that the term "paraplegia" or "paraplegic" might not be interpreted to include the functional loss of use of the lower limbs due to psychological disorders or other non-organic impairments. One commenter, citing General Counsel Precedent Opinion 60–90, asserted that such a restriction on eligibility for SAH grants is improper, and both commenters wanted to ensure that the definition for "paraplegic grant" would not exclude individuals who otherwise would have been eligible for assistance under 38 U.S.C. 2101(a).

The General Counsel opinion held that the determination of "loss of use" is made "irrespective of whether such loss is functional or organic in origin." VA did not propose to diverge from this holding. VA agrees with the commenters' concerns and, therefore, has decided to use the applicable statutory citations when referring to the grants authorized under 38 U.S.C. 2101(a) as well as 2101(b), rather than the terms "paraplegic housing grant" or "adaptive housing grant" as proposed.

No other substantive changes are made to the proposed rule. However, VA has made a few technical revisions. First, VA has revised the heading of subpart C to refer to "Eligible Individuals" rather than "Certain Disabled Veterans." Second, VA is amending the language in § 36.4404(a)(1), (2), and (3) to clarify that assistance is based on an individual's rating for entitlement to compensation under 38 U.S.C. chapter 11. These changes are intended to clarify that assistance under 38 U.S.C. chapter 21 is available to veterans and active duty servicemembers. Third, on September 24, 2009, VA published a final rule establishing 38 CFR 36.4412, which implemented provisions of the Housing and Economic Recovery Act of 2008, Public Law 110–289. Those provisions authorize VA to provide automatic annual increases to certain SAH grant recipients. VA sought comments on proposed § 36.4412 in a document published in the **Federal Register** on May 12, 2009 (74 FR 22145). VA inadvertently omitted § 36.4412 in the proposed rule that preceded this final rule. *See* 74 FR 51103. VA is re-inserting this provision, without further change, as § 36.4411. No substantive changes were made to the regulation. Finally, VA has revised §§ 36.4405(a)(iii), 36.4405(b), and 36.4406(b) for grammatical reasons.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

Although this document contains provisions constituting collections of information, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection provisions for subpart C of 38 CFR part 36 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0031, 2900–0047, 2900–0132, and 2900–0300.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory