section 407 of title 17 of the United States Code.

(n) The scope of a group registration.

When the Office issues a group registration under paragraph (f) of this section, the registration covers each issue in the group and each issue is registered as a separate work or a separate collective work (as the case may be).

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(d) * * *

(x) In the case of serials (as defined in § 202.3(b)(1)(v), but excluding newspapers) published in the United States in a physical format, or in both a physical and an electronic format, the copyright owner or the owner of the exclusive right of publication must provide the Library of Congress with two complimentary subscriptions to the serial, unless the Copyright Acquisitions Division informs the owner that the serial is not needed for the Library's collections. Subscription copies must be physically mailed to the Copyright Office, at the address for mandatory deposit copies specified in § 201.1(c) of this chapter, promptly after the publication of each issue, and the subscription(s) must be maintained on an ongoing basis. The owner may cancel the subscription(s) if the serial is no longer published by the owner, if the serial is no longer published in the United States in a physical format, or if the Copyright Acquisitions Division informs the owner that the serial is no longer needed for the Library's collections. In addition, prior to commencing the subscriptions, the owner must send a letter to the Copyright Acquisitions Division at the address specified in § 201.1(b) of this chapter confirming that the owner will provide the requested number of subscriptions for the Library of Congress. The letter must include the name of the publisher, the title of the newsletter, the International Standard Serial Number (“ISSN”) that has been assigned to the newsletter (if any), and the issue date and the numerical or chronological designations that appear on the first issue that will be provided under the subscriptions.


Sarang V. Damle,
General Counsel and Associate Register of Copyrights

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LIBRARY OF CONGRESS

Copyright Royalty Board

17 CFR Part 384

[Docket No. 17–CRB–0001–BER (2019–2023)]

Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments III)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges (Judges) publish for comment proposed regulations that set rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

DATES: Comments and objections are due no later than June 18, 2018.

ADDRESSES: You may submit comments and objections, identified by docket number 17–CRB–0001–BER (2019–2023), by any of the following methods:

· CRB’s electronic filing application: Submit comments online in eCRB at https://app.crb.gov/

· U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

· Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

· Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or


Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at https://app.crb.gov/ including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board’s electronic filing and case management system, at https://app.crb.gov/ and search for docket number 17–CRB–0001–BER (2019–2023).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance in Sound Recordings Act, Public Law 104–39, which created an exclusive right, subject to certain limitations, for copyright owners of sound recordings to perform publicly those sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon the passage of the Digital Millennium Copyright Act of 1998 (DMCA), Public Law 105–34, which allows public performance of a sound recording when made in accordance with the terms and rates of the statutory license, by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission. 17 U.S.C. 114(d).

The DMCA also created a statutory license for the making of an “ephemeral recording” of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license, among other things, allows entities that transmit performances of sound recordings to business establishments to make an ephemeral recording of a sound recording for later transmission, pursuant to the limitations set forth in section 114(d)(1)(C)(iv).

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the royalty rates and terms for “the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).” 17 U.S.C. 801(b)(1), 804(b)(2). Accordingly, the Judges published a notice commencing the current proceeding and requesting that interested parties submit petitions to participate. 82 FR 143 (Jan. 3, 2017). The Judges received Petitions to Participate from Mood Media
Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 384 of chapter III of title 37 of the Code of Federal Regulations as follows:

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

§ 384.3 Royalty fees for ephemeral recordings.

(a) Basic royalty rate. (1) For the making of any number of Ephemeral Recordings in the operation of a Business Establishment Service, a Licensee shall pay a royalty equal to the following percentages of such Licensee's "Gross Proceeds" derived from the use in such service of musical programs that are attributable to copyrighted recordings:

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>12.5</td>
</tr>
<tr>
<td>2020</td>
<td>12.75</td>
</tr>
<tr>
<td>2021</td>
<td>13.0</td>
</tr>
<tr>
<td>2022</td>
<td>13.25</td>
</tr>
<tr>
<td>2023</td>
<td>13.5</td>
</tr>
</tbody>
</table>

(2) "Gross Proceeds" as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv).

The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program; and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

* * * * *

§ 384.5 [Amended]

4. In § 384.5 amend paragraph (d)(4) by removing the second comma before the word "subject".


Suzanne M. Barnett,
Chief Copyright Royalty Judge.

[FR Doc. 2018–10509 Filed 5–16–18; 8:45 am]

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