

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization

from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7:30 a.m. to 5 p.m. on October 2, 2021 and from 7:30 a.m. to 5 p.m. on October 3, 2021.

Dated: June 15, 2021.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 385

[Docket No. 21-CRB-0001-PR (2023-2027)]

#### Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule.

**SUMMARY:** The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms applicable during the period beginning January 1, 2023, and ending December 31, 2027, for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works.

**DATES:** Comments and objections, if any, are due no later than July 26, 2021.

**ADDRESSES:** You may send comments, identified by docket number 21-CRB-0001-PR (2023-2027), online through eCRB at <https://app.crb.gov>.

*Instructions:* To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of

user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at <https://app.crb.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to eCRB at <https://app.crb.gov> and perform a case search for docket 21-CRB-0001-PR (2023-2027).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, at 202-707-7658 or [crb@loc.gov](mailto:crb@loc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 115 of the Copyright Act, title 17 of the United States Code, requires a copyright owner of a nondramatic musical work to grant a license (also known as the "mechanical" compulsory license) to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations. In addition to the production or distribution of physical phonorecords (compact discs, vinyl, cassette tapes, and the like), section 115 applies to digital transmissions of phonorecords, including permanent digital downloads and ringtones.

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1), 804(b)(4). Accordingly, the Judges commenced the current proceeding in January 2021, by publishing notice of the commencement and a request that interested parties submit petitions to participate. *See* 86 FR 25 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from *Amazon.com Services LLC*, *Apple Inc.*, *Copyright Owners* (joint petitioners *Nashville Songwriters Association International (NSAI)* and *National Music Publishers Association (NMPA)*), *Google LLC*, *George Johnson*, *Joint Record Company Participants* (filed by *Recording Industry Association of America, Inc.* for joint petitioners *Sony Music Entertainment*, *UMG Recordings*,

Inc., and Warner Music Group Corp.), Pandora Media, LLC, David Powell, SoundCloud Operations Inc.,<sup>1</sup> Spotify USA Inc., and Brian Zisk.

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021. On May 25, 2021, the Judges received a motion stating that several participants<sup>2</sup> had reached a partial settlement regarding the rates and terms under Section 115 of the Copyright Act, namely, for physical phonorecords, permanent downloads, ringtones, and music bundles for the 2023–2027 rate period and seeking approval of that partial settlement. *See Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations*, Docket No. 21–CRB–0001–PR (2023–2027) at 1 (May 25, 2021) (Motion). The movants state that “the settlement represents the consensus of buyers and sellers representing the vast majority of the market for ‘mechanical’ rights for [the 37 CFR 385] Subpart B Configurations.”<sup>3</sup> Motion at 4.

The settlement proposes that “Subpart B Configuration Rates and Terms presently set forth in 37 CFR part 385 subpart B . . . continue to be applicable to the Record Company Participants and all other licensees of ‘mechanical’ rights in musical works for the Subpart B Configurations, for the rate period covered by the Proceeding, with only a few minor editorial changes to the applicable regulations.” Motion at 3.

The proposed editorial changes apply to §§ 385.10 and 385.11 of Subpart B and to two definitions in Subpart A and would clarify the regulations. For example, the definition of Licensed Activity needs to be changed to remove the reference to Subpart B because the term Licensed Activity does not appear in Subpart B. *See* 37 CFR 385.2, 385.10–11; Motion at 6–7 (redline of regulations with rationale for changes).

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates

and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided they are submitted to the Judges for approval. This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

If the Judges adopt rates and terms reached pursuant to a negotiated settlement, those rates and terms are binding on all copyright owners of musical works and those using the musical works in the activities described in the proposed regulations.

The Judges propose an additional minor revision to change an outdated cross reference. They propose to shorten the cross reference 17 U.S.C. 115(c)(3)(C) and (D) to 17 U.S.C. 115 because the section no longer has a subsection (c)(3). *See* 17 U.S.C. 115; Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Public Law 115–264, 132 Stat. 3676, 3679–3684 (Oct. 11, 2018).

The Judges solicit comments on whether they should adopt the proposed regulations as statutory rates and terms relating to the making and distribution of physical or digital phonorecords of nondramatic musical works.

Comments and objections regarding the rates and terms and the minor revisions must be submitted no later than July 26, 2021.

#### List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

#### Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 385 as follows:

### PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

#### Subpart A—Regulations of General Application

■ 2. In § 385.2 revise the introductory text of the definition for “*Eligible Limited Download*”, the definition for “*Licensed Activity*”, and the fourth sentence for definition “*Sound Recording Company*” to read as follows:

#### § 385.2 Definitions.

\* \* \* \* \*

*Eligible Limited Download* means a transmission of a sound recording embodying a musical work to an End User of a digital phonorecord under 17 U.S.C. 115 that results in a Digital Phonorecord Delivery of that sound recording that is only accessible for listening for— \* \* \*

\* \* \* \* \*

*Licensed Activity*, as the term is used in subparts C and D of this part, means delivery of musical works, under voluntary or statutory license, via Digital Phonorecord Deliveries in connection with Interactive Eligible Streams, Eligible Limited Downloads, Limited Offerings, mixed Bundles, and Locker Services.

\* \* \* \* \*

*Sound Recording Company* means a person or entity that:

\* \* \* \* \*

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of a person identified in paragraphs (1) through (3) of this section.

\* \* \* \* \*

#### Subpart B—Physical Phonorecord Deliveries, Permanent Downloads, Ringtones, and Music Bundles

■ 3. Revise § 385.10 to read as follows:

#### § 385.10 Scope.

This subpart establishes rates and terms of royalty payments for making and distributing physical phonorecords, Permanent Downloads, Ringtones, and Music Bundles, in accordance with the provisions of 17 U.S.C. 115.

■ 4. Revise § 385.11 paragraph (a) to read as follows:

#### § 385.11 Royalty rates.

(a) Physical phonorecords and Permanent Downloads. For every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord

<sup>1</sup> SoundCloud Operations Inc. withdrew from the proceeding on May 21, 2021.

<sup>2</sup> The participants who filed the motion are the “Publisher/Songwriter Participants” (NMPA and NSAI) and the “Record Company Participants” (Sony Music Entertainment, UMG Recordings, Inc. and Warner Music Group Corp.). Motion at 1.

<sup>3</sup> Participants *Amazon.com* Services LLC, Google LLC, Pandora Media, LLC, and Spotify USA Inc. do not object to the settlement, Motion at 4 n.2, however, the movants state that they understand that participant George Johnson intends to object to it. Motion at 4.

or Permanent Download shall be either 9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

\* \* \* \* \*

**Jesse M. Feder,**  
*Chief Copyright Royalty Judge.*  
 [FR Doc. 2021-12950 Filed 6-24-21; 8:45 am]  
**BILLING CODE 1410-72-P**

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Humanities**

**45 CFR Part 1174**

**RIN 3136-AA36**

**Implementation of the Program Fraud Civil Remedies Act of 1986**

**AGENCY:** National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The National Endowment for the Humanities (NEH) is proposing to issue regulations to implement the Program Fraud Civil Remedies Act of 1986 (PFCRA). The PFCRA authorizes certain Federal agencies, including NEH, to impose civil penalties and assessments through administrative adjudication against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to NEH. The proposed rule will establish the procedures that NEH will follow in implementing the PFCRA, as well as specify the hearing and appeal rights of persons subject to penalties and assessments under the PFCRA.

**DATES:** Send comments on or before July 26, 2021.

**ADDRESSES:** You may send comments by email to [gencounsel@neh.gov](mailto:gencounsel@neh.gov).

*Instructions:* Include “3136-AA36” in the subject line of the email.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; [gencounsel@neh.gov](mailto:gencounsel@neh.gov).

**SUPPLEMENTARY INFORMATION:**

**1. Background**

In October 1986, Congress enacted the PFCRA, 31 U.S.C. 3801-3812. The PFCRA established an administrative remedy against any person who makes, or causes to be made, a false claim or written statement to certain Federal agencies. The PFCRA requires these Federal agencies to follow certain procedures in recovering penalties and assessments against people who file false claims or statements for which the liability is \$150,000 or less. Initially, the PFCRA did not apply to NEH. Section 10 of the Inspector General Reform Act of 2008, Public Law 110-409, 122 Stat. 4314, however, expanded the PFCRA’s scope to include NEH.

The PFCRA requires each covered agency to promulgate rules and regulations necessary to implement its provisions. Following the PFCRA’s enactment, the President’s Council on Integrity and Efficiency requested that the Department of Health and Human Services lead an inter-agency task force to develop model PFCRA regulations. This action was in keeping with the Senate Governmental Affairs Committee’s desire that “the regulations would be substantially similar throughout the government” (S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985)). The Council recommended that all covered agencies adopt the model rule.

Accordingly, NEH is implementing the PFCRA’s provisions through this

proposed rule—which substantively conforms to the model rule—in order to establish procedures by which NEH will seek to recover penalties and assessments against persons who file, or cause to have filed, false claims or statements with NEH for which liability is \$150,000 or less.

**2. Maximum Penalty Amount**

The PFCRA established a maximum penalty of \$5,000 for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), 28 U.S.C. 2461 note, required all Federal agencies to (1) adjust the penalty amount to 2016 inflation levels with an initial “catch-up” inflation adjustment; and (2) make subsequent annual adjustments for inflation.<sup>1</sup> This proposed rule incorporates the initial “catch-up” adjustment to 2016 inflation levels and the annual adjustments for 2017 through 2021, and applies those adjustments cumulatively to the civil monetary penalties that the PFCRA imposes.<sup>2</sup>

*A. Initial “Catch-Up” and 2021 Adjustments for Inflation*

NEH determined the first “catch-up” adjustment to 2016 inflation levels using the formula set forth in the 2015 Act. Specifically, NEH calculated the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for October of the last year in which Congress adjusted the PFCRA civil penalties (October 1986) and the CPI-U for October 2015, and then rounded to the nearest dollar.

NEH similarly determined each subsequent annual adjustment by calculating the percent increase between the CPI-U for the month of October preceding the date of the adjustment and the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment.

Table 1, below, details the above calculations.

TABLE 1—ANNUAL ADJUSTMENTS TO PFCRA CIVIL MONETARY PENALTIES, 2016–2021

Effective date	Baseline maximum penalty	Applicable multiplier based on percent increase in CPI-U	New baseline maximum penalty
August 1, 2016 .....	\$5,000	<sup>3</sup> 2.15628	\$10,781
January 15, 2017 .....	10,781	<sup>4</sup> 1.01636	10,957
January 15, 2018 .....	10,957	<sup>5</sup> 1.02041	11,181
January 15, 2019 .....	11,181	<sup>6</sup> 1.02522	11,463
January 15, 2020 .....	11,463	<sup>7</sup> 1.01764	11,665

<sup>1</sup> For a more detailed explanation of the 2015 Act and the civil monetary penalty inflation adjustment

calculations that it requires, see NEH’s regulation implementing the 2015 Act at 85 FR 35566.

<sup>2</sup> Table 1 details the annual adjustments to the PFCRA maximum penalty amount for years 2016–2021.