

SUPPLEMENTARY INFORMATION: Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On October 27, 2021, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2021–2025 for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. See 86 FR 59452.

Pursuant to those regulations, at least 25 days before January 1 of each year from 2022 to 2025, the Judges shall publish in the **Federal Register** notice of a cost of living adjustment (COLA) applicable to the royalty fees for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10.

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) from the CPI-U published in November 2020 (260.229), according to the formula: for subscription performances, $(1 + (C_y - 260.229) / 260.229) \times \0.0026 ; for nonsubscription performances, $(1 + (C_y - 260.229) / 260.229) \times \0.0021 ; for performances by a noncommercial webcaster in excess of 159,140 Aggregate Tuning Hours (ATH) per month, $(1 + (C_y - 260.229) / 260.229) \times \0.0021 ; where C_y is the CPI-U published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c). The CPI-U published by the Secretary of Labor from the most recent index published before December 1, 2023, is 307.671.¹ Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in an increase in the rates for 2024.

The 2024 rate for eligible transmissions of sound recordings by commercial webcasters is \$0.0031 per subscription performance and \$0.20025 per nonsubscription performance.

Application of the increase to rates for noncommercial webcasters results in a 2024 rate of \$0.0025 per performance for all digital audio transmissions in excess

of 159,140 ATH in a month on a channel or station.

As provided in 37 CFR 380.10(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Final Regulations

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

- 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

- 2. Section 380.10 is amended by revising paragraph (a) to read as follows:

§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *Royalty fees.* For the year 2024, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

- (1) Commercial webcasters: \$0.0031 per Performance for subscription services and \$0.0025 per Performance for nonsubscription services.
- (2) Noncommercial webcasters: \$1,000 per year for each channel or station and \$0.0025 per Performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

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Dated: November 22, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

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Copyright Royalty Board

37 CFR Part 381

[Docket No. 23–CRB–0011–PBR (2023–2027) COLA (2024)]

Cost of Living Adjustment to Public Broadcasters Compulsory License Royalty Rate

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) to the royalty rate that noncommercial radio stations at certain colleges, universities, and other educational institutions that are not affiliated with National Public Radio must pay for the use in 2024 of published nondramatic musical compositions in the SESAC Performing Rights, LLC (SESAC) and Global Music Rights, LLC (GMR) repertoires pursuant to the statutory license under the Copyright Act for noncommercial broadcasting.

DATES:

Effective date: November 30, 2023.

Applicability dates: These rates are applicable to the period January 1, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, creates a statutory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

On June 28, 2023, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under section 118 of the Copyright Act for the license period 2023–2027. See 88 FR 41827. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish in the **Federal Register** notice of the change in the cost of living and a revised schedule of the rates codified at § 381.5(c)(3) and (4) relating to compositions in the repertory of SESAC and GMR. The adjustment, fixed to the nearest dollar, shall be the greater of (1) the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) (“CPI-U”) “during the period from the most recent index published prior to the

¹ This CPI-U was announced on November 14, 2023, by the Bureau of Labor Statistics in its *Consumer Price Index News Release—Consumer Price Index*, available at <https://www.bls.gov/news.release/cpi.htm> at Table 1.

previous notice to the most recent index published prior to December 1, of that year” or (2) 1.5%. 37 CFR 381.10.

The change in the cost of living as determined by the CPI-U during the period from the most recent index published prior to the previous notice, *i.e.*, before December 1, 2022, to the most recent index published before December 1, 2023, is 3.2%.¹ In accordance with 37 CFR 381.10(b), the Judges announce that the COLA for calendar year 2024 shall be 3.2%. Application of the 3.2% COLA to the 2023 rates for the performance of published nondramatic musical compositions in the repertory of SESAC and GMR—\$188 per station—results in an adjusted rate of \$194 per station, rounded to the nearest dollar.

¹ On November 14, 2023, the Bureau of Labor Statistics announced that the CPI-U increased 3.2% over the last 12 months.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Rates, Television.

Final Regulations

In consideration of the foregoing, the Judges amend part 381 of title 37 of the Code of Federal Regulations as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:
Authority: 17 U.S.C. 118, 801(b)(1) and 803.

■ 2. Section 381.5 is amended by revising paragraphs (c)(3)(i) and (ii) and (c)(4)(i) and (ii) to read as follows:

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

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(c) * * *

(3) * * *

(i) 2023: \$188 per station.

(ii) 2024: \$194 per station.

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(4) * * *

(i) 2023: \$188 per station.

(ii) 2024: \$194 per station.

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Dated: November 22, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

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