Federal Register / Vol. 89, No. 2 / Wednesday, January 3, 2024 / Rules and Regulations 267

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 384

[Doct No. 21–CRB–0013–BER (2024–2028)]

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

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish final regulations setting rates and terms for the making of ephemeral copies of sound recordings to facilitate digital audio transmissions of those sound recordings to business establishments for the period from January 1, 2024, through December 31, 2028.

DATES: Effective date: January 1, 2024.

ADDRESSES: For access to the docket to read submitted background documents go to eCRB, the Copyright Royalty Board’s electronic filing and case management system, at https://app.crbr.gov/, and search for docket number 21–CRB–0013–BER (2024–2028).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, (202) 707–7658, crb@loc.gov.

SUPPLEMENTARY INFORMATION: The Copyright Act provides that the Copyright Royalty Judges (Judges) commence a proceeding every fifth year to determine royalty rates and terms for the recording of ephemeral copies of sound recordings pursuant to the statutory license in 17 U.S.C. 112(e)(1) to facilitate digital audio transmissions of those sound recordings to business establishments pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv). See 17 U.S.C. 804(b)(2).

In accordance with section 804(b)(2), the Judges commenced the proceeding to set rates and terms for the period 2024–2028 on January 5, 2022 (87 FR 490). In the Federal Register notice, the Judges requested that interested parties submit petitions to participate. Petitions to Participate were received from: Mood Media Corp., Music Choice, Rockbot, Inc., SiriusXM Radio Inc. and Its Wholly Owned Subsidiaries, SoundExchange, Inc., Soundtrack Your Brand Sweden AB, and Stingray Music USA Inc. The Judges initiated the three-month negotiation period and directed the participants to submit written direct statements no later than September 19, 2022. See 17 U.S.C. 803(b)(3).

On September 19, 2022, the judges received a Motion to Adopt Settlement stating that all participants had reached a settlement obviating the need for written direct statements or a hearing.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty 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. The Judges must provide “an opportunity to comment on the agreement” to both participants and non-participants in the rate proceeding who “would be bound by the terms, rates, or other determination set by any agreement . . . ” 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also “object to [the agreement’s] adoption as a basis for statutory terms and rates.” Id.

Accordingly, on October 4, 2023 the Judges published a notice requesting comment on the proposed rates and terms (88 FR 68527). The Judges received no timely comments or objections in response to the October 4, 2023 notice.

Having received no opposition to the agreement and finding that the agreement among the moving parties provides a reasonable basis for setting statutory rates and terms, the Judges, by this notice, adopt as final regulations the rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2024, through December 31, 2028.

List of Subjects in 37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges 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

§ 384.1 [Amended]

2. In § 384.1(a), remove the phrase “January 1, 2019, through December 31, 2023” and add in its place “January 1, 2024, through December 31, 2028.”

3. In § 384.3, revise paragraphs (a) and (b) to read as follows:

§ 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 recordings subject to protection under title 17, United States Code:

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate (%)</th>
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<tbody>
<tr>
<td>2024</td>
<td>14.0</td>
</tr>
<tr>
<td>2025</td>
<td>14.5</td>
</tr>
<tr>
<td>2026</td>
<td>14.75</td>
</tr>
<tr>
<td>2027</td>
<td>15.0</td>
</tr>
<tr>
<td>2028</td>
<td>15.0</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 sound recordings subject to protection under title 17, United States Code, 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).

(3) Subject to paragraph (a)(4) of this section, the royalty specified in paragraph (a)(1) of this section for a particular Business Establishment Service offering may be reduced by a percentage corresponding to the “Direct License Share” for such Business Establishment Service offering, as follows:

(i) If the transmissions of the Business Establishment Service offering are entirely made over the internet or the Licensee otherwise is able to count all of its Performances to business subscribers, the Direct License Share for such Business Establishment Service offering is its Performances of directly licensed sound recordings and sound recordings for which no license is required (e.g., sound recordings in which the copyrights are owned by the Licensee) (collectively, “Excluded
Recordings’)) divided by its total Performances.

(ii) If the transmissions of the Business Establishment Service offering are made to 10% or more of the bona fide subscriber locations of the Business Establishment Service offering over the internet, or the Licensee otherwise is able to count its Performances to 10% or more of bona fide subscriber locations of the Business Establishment Service offering, and the Business Establishment Service offering provides transmissions of a substantially similar set of channels (fairly represented by the countable channels) to other subscriber locations by means that do not allow the Licensee to count Performances (e.g., by satellite with no usage feedback), the Direct License Share for such Business Establishment Service offering is a fraction calculated on a uniform basis for all subscriber locations of the Business Establishment Service offering.

(iii) If the transmissions of the Business Establishment Service offering are made to one subscriber location.

(iv) Otherwise, the Direct License Share for such Business Establishment Service offering is calculated on a uniform basis for all subscriber locations of the Business Establishment Service offering.

(a)(3) The Direct License Share for each Business Establishment Service offering is its License Share for such Business Establishment Service if the Business Establishment Service offering provides transmissions of a substantially similar set of channels (fairly represented by the countable channels) to other subscriber locations by means that do not allow the Licensee to count Performances (e.g., by satellite with no usage feedback), the Direct License Share for such Business Establishment Service offering is a fraction calculated on a uniform basis for all subscriber locations of the Business Establishment Service offering.

(b) Minimum fee. Each Licensee shall pay a minimum fee of $25,000 for each calendar year of the License Period in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year. These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

4. Amend § 384.4 as follows:

a. Redesignate paragraphs (g) and (h) as paragraphs (i) and (j);

b. Revise paragraph (f);

c. Add new paragraphs (g) and (h);

d. Revise newly redesignated paragraph (i)(1).
this paragraph (g) on a form prepared, and made available to Licensees, by the Collective. In the case of a minimum payment, or if a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall contain only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The account number assigned to the Licensee by the Collective for the relevant Business Establishment Service offering (if the Licensee has been notified of such account number by the Collective);

(4) The signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a corporation;

(ii) A partner or delegate, if the Licensee is a partnership;

(iii) An officer of the corporation, if the Licensee is a corporation;

(5) The printed or typewritten name of the person signing the statement of account;

(6) The date of signature;

(7) If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(8) A certification of the capacity of the person signing; and

(9) A statement to the following effect: I, the undersigned owner or agent of the Licensee, or officer or partner, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(b) International Standard Recording Codes. Notwithstanding § 370.4(d)(2)(v) of this chapter, the Licensee must use International Standard Recording Codes (ISRCs) in its Reports of Use, where available and feasible.

(i) * * *

(1) However, in any case in which a Licensee has not provided a compliant Report of Use, whether for the License Period or otherwise, and the board of directors of the Collective determines that further efforts to seek the missing Report of Use from the Licensee would not be warranted, the Collective may determine that it will distribute the royalties associated with the Licensee’s missing Report of Use on the basis of a proxy data set approved by the board of directors of the Collective.

* * * * * Dated: October 25, 2023.

David P. Shaw, Chief Copyright Royalty Judge.

David R. Strickler, Copyright Royalty Judge.

Steve Ruwe, Copyright Royalty Judge.

Approved by: Carla D. Hayden, Librarian of Congress.

[FR Doc. 2023–28421 Filed 12–29–23; 8:45 am]

BILLING CODE 1410–72–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 22–76; FR ID 193391]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the Commission’s 2022 ICS Order, FCC 22–76 (September 30, 2022), in which the Commission, among other actions, adopted rules to improve access to communications services for incarcerated people with communication disabilities that expand the requirements for advanced Telecommunications Relay Service (TRS). This document is consistent with the 2022 ICS Order, which stated that the Commission would publish a document in the Federal Register announcing the effective date of this rule.

DATES: The addition of 47 CFR 64.6040(c) (amendatory instruction 11), published at 87 FR 75496 on December 9, 2022, and delayed indefinitely, is effective on January 9, 2023.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Pricing Policy Division, Wireline Competition Bureau, (202) 418–7122, or email William.kehoe@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on December 14, 2023, OMB approved, for a period of three years, the information collection requirements relating to § 64.6040(c) of the Commission’s rules, as contained in the Commission’s 2022 ICS Order, FCC 22–76, published at 87 FR 75496 on December 9, 2022. The OMB Control Number is 3060–1222. In the 2022 ICS Order, the Commission stated that the amendments to the rules were effective on January 9, 2023, except for the amendments to §§ 64.611(k)(1)(i) through (iii), 64.6040(c), and 64.6060(a)(5) through (7), which were delayed pending OMB approval. The Commission publishes this document as an announcement of the effective date of § 64.6040(c) only.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20002. Please include the OMB Control Number, 3060–1222, in your correspondence. The Commission will also accept your comments via email at FRA@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on December 14, 2023, for the information collection requirements contained in § 64.6040(c) of the Commission’s rules.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1222.


The data collection burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1222.

OMB Approval Date: December 14, 2023.