

record retention requirements, treatment of Licensees' confidential information, audit of royalty payments and distributions, and any definitions for applicable terms not defined in this subpart shall be those set forth in subpart A of this part.

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

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AUTHORITY: 17 U.S.C. 118, 801(b)(1) and 803.

SOURCE: 72 FR 67647, Nov. 30, 2007, unless otherwise noted.

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2023, and ending on December 31, 2027. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71105, Nov. 29, 2012; 83 FR 2740, Jan. 19, 2018; 88 FR 41828, June 28, 2023]

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term *public broadcasting entity* means a non-

commercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.3 [Reserved]

§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

(a) *Determination of royalty rate.* The following rates and terms shall apply to the performance by the Public Broadcasting Service (PBS), National Public Radio (NPR), and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements: The royalty shall be \$1.

- (1) For performance of such work in a feature presentation of PBS:
 - 2013–2017 \$232.18
- (2) For performance of such a work as background or theme music in a PBS program:
 - 2013–2017 \$58.51
- (3) For performance of such a work in a feature presentation of a station of PBS:
 - 2013–2017 \$19.84
- (4) For performance of such a work as background or theme music in a program of a station of PBS:
 - 2013–2017 \$4.18
- (5) For the performance of such a work in a feature presentation of NPR:
 - 2013–2017 \$23.53
- (6) For the performance of such a work as background or theme music in an NPR program:
 - 2013–2017 \$5.70
- (7) For the performance of such a work in a feature presentation of a station of NPR:

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2013–2017	\$1.66
(8) For the performance of such a work as background or theme music in a program of a station of NPR:	
2013–2017	\$.59

tion of such owner has been performed under the terms of the schedule established in paragraph (a), permit such copyright owner to examine the report.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71105, Nov. 29, 2012; 83 FR 2740, Jan. 19, 2018; 88 FR 41828, June 28, 2023]

(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of the schedule established in paragraph (a) of this section, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with American Society of Authors, Composers and Publishers (ASCAP), Broadcast Music, Inc. (BMI), Global Music Rights, LLC (GMR), or SESAC Performing Rights, LLC (SESAC) covering the license period January 1, 2023, to December 31, 2027, to provide a music use report shall, upon request of a copyright owner who believes a musical composi-

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

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) *Music fees.*

TABLE 1 TO PARAGRAPH (c)(1)(i)

	Number of full-time students	2023	2024	2025	2026	2027
Level 1	<1,000	\$390	\$400	\$410	\$421	\$432

TABLE 1 TO PARAGRAPH (c)(1)(i)—Continued

	Number of full-time students	2023	2024	2025	2026	2027
Level 2	1,000–4,999	451	463	475	487	500
Level 3	5,000–9,999	619	635	652	669	686
Level 4	10,000–19,999	801	822	843	865	887
Level 5	20,000+	1,009	1,035	1,062	1,090	1,118

(ii) *Fees for stations with an authorized effective radiated power (ERP) of 100 Watts or less.* Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized ERP, as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its

current Federal Communications Commission (FCC) license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) *Music fees.*

TABLE 2 TO PARAGRAPH (c)(2)(i)

	Number of full-time students	2023	2024	2025	2026	2027
Level 1	<1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000–4,999	451	463	475	487	500
Level 3	5,000–9,999	619	635	652	669	686
Level 4	10,000–19,999	801	822	843	865	887
Level 5	20,000+	1,009	1,035	1,062	1,090	1,118

(ii) *Fees for stations with an authorized ERP of 100 Watts or less.* Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized ERP, as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

ment of Labor, Bureau of Labor Statistics, during the twelve (12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year; or

(B) One and one-half percent (1.5%).

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) 2023: \$188 per station.

(ii) 2024: \$194 per station.

(iii) 2025: The 2024 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(vi) For stations broadcasting primarily in a religious format (including, without limitation, Contemporary Christian music, praise and worship, Gospel, Southern Gospel, Spanish religious music, inspirational, religious, etc.), at their option for 2023–2027, either the rates set forth in paragraph (c)(4) of this section or the rates set forth in § 381.6(d)(4).

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) 2023: \$188 per station.

(ii) 2024: \$194 per station.

(iii) 2025: The 2024 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(vi) Such cost of living adjustment to be made in accordance with the greater of: (A) The change, if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Depart-

(5) For the performance of all other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, SESAC, and GMR not later than January 31 of each year. Each annual payment to ASCAP, BMI, SESAC, and GMR shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the ERP as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, SESAC, and GMR.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC, and GMR shall not in any one calendar year request more than 10 stations to furnish such reports.

[72 FR 67647, Nov. 30, 2007, as amended at 73 FR 72726, Dec. 1, 2008; 74 FR 62705, Dec. 1, 2009; 75 FR 74623, Dec. 1, 2010; 76 FR 74703, Dec. 1, 2011; 77 FR 71105, Nov. 29, 2012; 78 FR 71501, Nov. 29, 2013; 79 FR 71319, Dec. 2, 2014; 80 FR 73118, Nov. 24, 2015; 81 FR 84478, Nov. 23, 2016; 83 FR 2740, Jan. 19, 2018; 83 FR 61126, Nov. 28, 2018; 84 FR 64206, Nov. 21, 2019; 85 FR 74884, Nov. 24, 2020; 86 FR 66460, Nov. 23, 2021; 88 FR 41829, June 28, 2023; 88 FR 83510, Nov. 30, 2023]

§ 381.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel (“IBOC”) digital radio signal and such programming is different than the station’s analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Definitions.* As used in paragraphs (d) and (e) of this section, the following terms and their variant forms mean the following:

(1) *Feature Music* shall mean any performance of a musical work, whether live or recorded, that is the principal focus of audience attention. Feature Music does not include bridge, background, or underscore music, themes or signatures, interstitial music between programs such as in public service announcements or program sponsorship identifications, brief musical transitions in and out of program segments (not to exceed 60 seconds in duration), incidental performances of music during broadcasts of public, religious, or sports events, or brief performances during news, talk, religious, and sports programming of no more than 30 seconds in duration.

(2) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station’s Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator or Booster Station that extends a public broadcasting entity’s signal beyond the contours of a station’s Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator or Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station’s community license is located.

(3) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(4) *Talk Format Station* shall mean a noncommercial radio station:

(i) Whose program content primarily consists of talk shows, news programs, sports, community affairs or religious sermons (or other non-music-oriented programming);

(ii) That performs Feature Music in less than 20% of its programming annually; and

(iii) That performs music-oriented programming for no more than four (4) programming hours during the hours from 6 a.m. to 10 p.m. each weekday, with no two (2) hours of such programming occurring consecutively, with the exception of up to five (5) weekdays during the year.

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(5) *Weekday* shall mean the 24-hour period starting at 12 a.m. through 11:59 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays occurring between January 1 of a given year up to and including Thanksgiving day of that year.

(6) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

(c) *Voluntary license agreements*. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section con-

cerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(d) *Royalty rate*. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music fees for stations with 20% or more programming containing Feature Music are as follows:

TABLE 1 TO PARAGRAPH (d)(1)(i)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000–249,999	754	769	784	800	816
Level 3	250,000–499,999	1,346	1,373	1,400	1,428	1,457
Level 4	500,000–999,999	2,017	2,057	2,098	2,140	2,183
Level 5	1,000,000–1,499,999	2,691	2,745	2,800	2,856	2,913
Level 6	1,500,000–1,999,999	3,363	3,430	3,499	3,569	3,640
Level 7	2,000,000–2,499,999	4,035	4,116	4,198	4,282	4,368
Level 8	2,500,000–2,999,999	4,708	4,802	4,898	4,996	5,096
Level 9	3,000,000 and above	6,726	6,861	6,998	7,138	7,280

(ii) Talk Format Station fees for stations with <20% Feature Music programming are as follows:

TABLE 2 TO PARAGRAPH (d)(1)(ii)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$265	\$270	\$276	\$281	\$287
Level 2	25,000–249,999	574	585	597	609	621
Level 3	250,000–499,999	574	585	597	609	621
Level 4	500,000–999,999	574	585	597	609	621
Level 5	1,000,000–1,499,999	942	961	980	1,000	1,020
Level 6	1,500,000–1,999,999	1,177	1,201	1,225	1,249	1,274
Level 7	2,000,000–2,499,999	1,412	1,440	1,469	1,498	1,528
Level 8	2,500,000–2,999,999	1,647	1,680	1,714	1,748	1,783
Level 9	3,000,000 and above	2,354	2,401	2,449	2,498	2,548

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music fees for stations with 20% or more programming containing Feature Music are as follows:

TABLE 3 TO PARAGRAPH (d)(2)(i)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000–249,999	754	769	784	800	816

TABLE 3 TO PARAGRAPH (d)(2)(i)—Continued

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 3	250,000–499,999	1,346	1,373	1,400	1,428	1,457
Level 4	500,000–999,999	2,017	2,057	2,098	2,140	2,183
Level 5	1,000,000–1,499,999	2,691	2,745	2,800	2,856	2,913
Level 6	1,500,000–1,999,999	3,363	3,430	3,499	3,569	3,640
Level 7	2,000,000–2,499,999	4,035	4,116	4,198	4,282	4,368
Level 8	2,500,000–2,999,999	4,708	4,802	4,898	4,996	5,096
Level 9	3,000,000 and above	6,726	6,861	6,998	7,138	7,280

(ii) Talk Format Station fees for stations with <20% Feature Music programming are as follows:

TABLE 4 TO PARAGRAPH (d)(2)(ii)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$265	\$270	\$276	\$281	\$287
Level 2	25,000–249,999	574	585	597	609	621
Level 3	250,000–499,999	574	585	597	609	621
Level 4	500,000–999,999	574	585	597	609	621
Level 5	1,000,000–1,499,999	942	961	980	1,000	1,020
Level 6	1,500,000–1,999,999	1,177	1,201	1,225	1,249	1,274
Level 7	2,000,000–2,499,999	1,412	1,440	1,469	1,498	1,528
Level 8	2,500,000–2,999,999	1,647	1,680	1,714	1,748	1,783
Level 9	3,000,000 and above	2,354	2,401	2,449	2,498	2,548

(3) For all such compositions in the repertoire of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with 20% or more programming containing Feature Music are as follows:

TABLE 5 TO PARAGRAPH (d)(3)(i)

	Population count	2023	2024	2025	2026	2027
		Level 1	0–24,999	\$189	\$192	\$196
Level 2	25,000–249,999	189	192	196	200	204
Level 3	250,000–499,999	315	321	328	334	341
Level 4	500,000–999,999	473	482	492	502	512
Level 5	1,000,000–1,499,999	630	643	656	669	682
Level 6	1,500,000–1,999,999	789	805	821	837	854
Level 7	2,000,000–2,499,999	945	964	983	1,003	1,023
Level 8	2,500,000–2,999,999	1,104	1,126	1,149	1,172	1,195
Level 9	3,000,000 and above	1,577	1,608	1,640	1,673	1,707

(ii) Talk Format Station fees for stations with <20% Feature Music programming are as follows:

TABLE 6 TO PARAGRAPH (d)(3)(ii)

	Population count	2023	2024	2025	2026	2027
		Level 1	0–24,999	\$130	\$133	\$135
Level 2	25,000–249,999	189	192	196	200	204
Level 3	250,000–499,999	189	192	196	200	204
Level 4	500,000–999,999	189	192	196	200	204
Level 5	1,000,000–1,499,999	221	225	229	234	239
Level 6	1,500,000–1,999,999	276	282	287	293	299
Level 7	2,000,000–2,499,999	331	337	344	351	358

TABLE 6 TO PARAGRAPH (d)(3)(ii)—Continued

	Population count	2023	2024	2025	2026	2027
Level 8	2,500,000–2,999,999	386	394	402	410	418
Level 9	3,000,000 and above	552	563	574	586	597

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) For a public broadcasting entity within the scope of this section that is broadcasting one or more radio stations as of January 1, 2023, a single \$50 fee for each such station for the entire five-year license term from 2023 through 2027; and

(ii) For a public broadcasting entity within the scope of this section that begins broadcasting a radio station after January 1, 2023, but before December 31, 2027, a pro-rated amount equal to \$10 multiplied by the number of full or partial years remaining in the 2023–2027 license term as of the date on which the radio station begins broadcasting (*e.g.*, a public broadcasting entity that begins broadcasting a radio station in 2025 shall pay \$30 for that station for the remainder of the term).

(5) For the performance of all other such compositions, from 2023 through 2027: \$1.

(e) *Payment of royalty rate*—(1) *ASCAP, BMI, and SESAC.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, and SESAC. Upon prior written notice thereof from ASCAP, BMI, or SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such dec-

laration shall be furnished to each of ASCAP, BMI, and SESAC. Upon prior written notice thereof from ASCAP, BMI, or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

(2) *GMR.* For fees due pursuant to paragraph (d)(4)(i) of this section, the public broadcasting entity shall pay the required royalty rate to GMR not later than January 31, 2023. For fees due pursuant to paragraph (d)(4)(ii) of this section, the public broadcasting entity shall pay the required royalty rate to GMR not later than 60 days after the public broadcasting entity begins to broadcast the radio station for which such fee is due. If a fee is paid pursuant to paragraph (d)(4)(i) or (ii) of this section for a radio station and that station changes ownership during the course of the license term but continues to fall within the scope of this section, no additional fee shall be due for that station during the 2023–2027 license term.

(f) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR, upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC, and GMR each shall not in any one calendar year request more than 10 stations to furnish such reports.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71106, Nov. 29, 2012; 83 FR 2741, Jan. 19, 2018; 88 FR 41830, June 28, 2023]

§ 381.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not

in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities, including transmission via the internet by PBS and NPR. The schedule of rates and terms established in this section include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2023–2027
(A) Feature	\$121.07
(B) Concert feature (per minute)	36.36
(C) Background	61.19
(D) Theme:	
(1) Single program or first series program	61.19
(2) Other series program	24.84

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2023–2027
(A) Feature	\$10.01
(B) Concert feature (per minute)	2.63
(C) Background	4.35
(D) Theme:	
(1) Single program or first series program	4.35
(2) Other series program	1.73

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed under this section of a musical work in an NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of the schedule established in this section, “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2023–2027
(i) Feature	\$13.11
(ii) Concert feature (per minute)	19.24
(iii) Background	6.56
(iv) Theme:	
(A) Single program or first series program	6.56
(B) Other series program	2.62

(3) For purposes of the schedule established in this section, a “concert feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance, or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2023–2027
(i) Feature	\$.83
(ii) Feature (concert) (per half hour)	1.72
(iii) Background42

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2022, shall be

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subject to the schedule of royalty rates established in this section.

(6) For each use licensed under this section pursuant to paragraphs (b)(1)(i) and (b)(2) of this section for transmission via the internet, the royalty fees shall include a pro-rata share of \$2,000 per calendar year, which share shall be determined by calculating the aggregate amount of royalty fees earned during that calendar year and dividing the sum by the amount of royalty fees earned for each use.

(c) *Payment of royalty rates.* The required royalty due under paragraphs (b)(1), (2), and (4) of this section shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year and not later than January 31 for uses during the last six months of the preceding calendar year. The required royalty due under paragraph (b)(6) of this section for each calendar year of the statutory license term shall be paid to each known copyright owner not later than March 31 of each following year for PBS- or NPR-distributed uses via the internet during the preceding calendar year.

(d) *Records of use—(1) Maintenance of cue sheets.* PBS and its stations, NPR, or other public broadcasting entities shall maintain and make available for examination pursuant to paragraph (e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) *Content of cue sheets or summaries.* Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Judges: deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Royalty Judges via online

filing in eCRB one electronic copy of their standard music cue sheets or summaries of same listing the recording pursuant to the schedule established in this section of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Royalty Judges upon their request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to the schedule.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71108, Nov. 29, 2012; 83 FR 2742, Jan. 19, 2018; 88 FR 41832, June 28, 2023]

§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section not otherwise licensed by the copyright owner:

(i) For such uses in a PBS-distributed program:

	2023–2027
(A) For featured display of a work	\$70.75
(B) For background and montage display	34.50
(C) For use of a work for program identification or for thematic use	139.46

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	2023-2027
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	45.82

(ii) For such uses in other than PBS-distributed programs:

	2023-2027
(A) For featured display of a work	\$45.82
(B) For background and montage display	23.48
(C) For use of a work for program identification or for thematic use	93.65
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	23.49

(2) For the purposes of the schedule in paragraph (b)(1) of this section the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(3) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".

(4) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(5) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each

copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and, upon request, furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Royalty Judges.* (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

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(f) *Terms of use.* (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2027, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71108, Nov. 29, 2012; 88 FR 41833, June 28, 2023]

§ 381.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust funds.

§ 381.10 Cost of living adjustment.

(a) On or before December 1, 2023, the Copyright Royalty Judges shall publish in the FEDERAL REGISTER a notice of the change in the cost of living as determined by the Consumer Price Index

(all consumers, all items) during the period from the most recent Index published prior to December 1, 2022, to the most recent Index published prior to December 1, 2023. On or before each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice to the most recent Index published prior to December 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the FEDERAL REGISTER a revised schedule of the rates for § 381.5(c)(3) and (4), the rates to be charged for compositions in the repertory of SESAC and GMR, which shall adjust the royalty amounts established in a dollar amount according to the greater of:

(1) The change in the cost of living determined as provided in paragraph (a) of this section; or

(2) One-and-a-half percent (1.5%).

(3) Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for the rates for § 381.5(c)(3) and (4) shall become effective thirty (30) days after publication in the FEDERAL REGISTER.

[88 FR 41833, June 28, 2023]

§ 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.