

### § 260.3

(c)(1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors if any, less advertising agency commissions not to exceed 15% of those fees incurred to recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the Programming Service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the Programming Service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (c)(1) (i) through (vii) of this section.

(2) Gross revenues shall include such payments as set forth in paragraphs (c)(1) (i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (c)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

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(d) During any given payment period, the value of each performance of each digital sound recording shall be the same.

[63 FR 25413, May 8, 1998, as amended at 64 FR 36576, July 7, 1999; 65 FR 39820, June 28, 2000]

### § 260.3 Terms for making payment of royalty fees.

(a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(b) Payment shall be made on the twentieth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct reasonable costs incurred in the administration of the distribution of the royalties, so long as the reasonable costs do not exceed the actual costs incurred by the collecting entity.

(e) Commencing June 1, 1998, and until such time as a new designation is made, the Recording Industry Association of America, Inc. shall be the agent receiving royalty payments and statements of account.

[63 FR 25413, May 8, 1998, as amended at 63 FR 30636, June 5, 1998]

### § 260.4 Confidential information and statements of account.

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt subscription digital transmission service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between