

§ 255.4

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

[60 FR 55459, Nov. 1, 1995, as amended at 63 FR 7289, Feb. 13, 1998]

§ 255.4 Definition of digital phonorecord delivery.

A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

[60 FR 61657, Dec. 1, 1995]

§ 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and

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distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the “Physical Rate”). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

[64 FR 6223, Feb. 9, 1999]

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

[64 FR 6223, Feb. 9, 1999]

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C),

upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

[64 FR 6223, Feb. 9, 1999]

§ 255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

[64 FR 6223, Feb. 9, 1999]

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

Sec.

256.1 General.

256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

AUTHORITY: 17 U.S.C. 702, 802.

§ 256.1 General.

This part establishes adjusted terms and rates for royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

[47 FR 52159, Nov. 19, 1982. Redesignated at 59 FR 23993, May 9, 1994, and amended at 60 FR 8198, Feb. 13, 1995]

§ 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) Commencing with the second semiannual accounting period of 2000 and for each semiannual accounting period thereafter, the royalty rates es-

tablished by 17 U.S.C. 111(d)(1)(B) shall be as follows:

(1) .956 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fees, if any, payable pursuant to paragraphs (a) (2) through (4) and (c);

(2) .956 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .630 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .296 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the second semiannual accounting period of 2000 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C. 111(d)(1) (C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total \$189,800 or less, gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which \$189,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$7,400. The royalty fee payable under this paragraph shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by the subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$189,800 but less than \$379,600, the royalty fee payable under this paragraph shall be:

(i) 0.5 of 1 per centum of any gross receipts up to \$189,800 and