

STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION SERVICE  
ELECTING PER PERFORMANCE OPTION - 2005



Send your PAYMENT and STATEMENT OF ACCOUNT to:

SoundExchange, Inc.  
Attn: Royalty Administration  
1330 Connecticut Avenue, N.W.  
Suite 330  
Washington, D.C. 20036

Call SoundExchange at (202)828-0120 for its Federal Tax Identification Number.

FOR THE PERIOD: FOR ANY MONTH DURING THE PERIOD JANUARY – DECEMBER  
2005

Please identify the month for which this Statement of Account is filed (the "Month"):

ENTITY / SERVICE NAME: \_\_\_\_\_

URL: \_\_\_\_\_

USE THIS STATEMENT OF ACCOUNT IF YOU HAVE PREVIOUSLY ELECTED<sup>1</sup> TO PAY ROYALTIES FOR THE SERVICE AND PERIOD NOTED ABOVE ON A PER PERFORMANCE<sup>2</sup> BASIS (OR IF YOU DID NOT FILE AN ELECTION FORM).

SECTION I. PER PERFORMANCE ROYALTY CALCULATION

Please enter the number of Performances transmitted for the Month. Please also fill in the monthly information for previous months in 2005, as it is necessary to calculate the annual minimum fee.

	PERFORMANCES	
1. January		1
2. February		2
3. March		3
4. April		4
5. May		5
6. June		6

<sup>1</sup>The Notice of Election is located at [http://soundexchange.com/licensee/documents/Notice\\_of\\_Election\\_NonsubscriptionService\\_2004.pdf](http://soundexchange.com/licensee/documents/Notice_of_Election_NonsubscriptionService_2004.pdf)  
<sup>2</sup>"Performance" has the meaning set forth 69 Fed. Reg. 5693, 5696 (Feb. 6, 2004) (to be codified at 37 C.F.R. 262.2) ([http://soundexchange.com/licensee/documents/Fed\\_Reg\\_2\\_6\\_04.pdf](http://soundexchange.com/licensee/documents/Fed_Reg_2_6_04.pdf)).

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	<b>PERFORMANCES</b>	
7. July		7
8. August		8
9. September		9
10. October		10
11. November		11
12. December		12
13. Add lines 1-12		13
14. Multiply line 13 by .96		14
15. Multiply line 14 by \$0.000762 (rounded to the nearest cent). <b>This is your Per Performance Liability.</b>	\$	15

**SECTION II. ANNUAL LIABILITY**

16. Enter the maximum number of channels or stations of programming transmitted by the service or entity since January 1, 2005. <sup>3</sup> If "5" or more, then enter "5" only.		16
17. If line 16 is less than "5", then multiply line 16 by \$500. If the number of your channels or stations transmitted since January 1, 2005, is greater than or equal to "5", then enter \$2,500. <b>This is your Annual Minimum Fee Liability for 2005.</b>	\$	17
18. Enter the greater of lines 15 or 17.	\$	18
19. Enter amounts previously paid to SoundExchange for the months January 2005 through the current date (inclusive of any payments previously made for your Annual Minimum Fee Liability for 2005). Do not include in this amount any payments made during 2005 for any prior year (rounded to the nearest cent).	\$	19
20. Subtract line 19 from line 18 (rounded to the nearest cent). <b>THIS IS THE AMOUNT THAT MUST BE PAID TO SOUNDEXCHANGE FOR THE CURRENT MONTH. PAYMENT IS DUE 45 DAYS AFTER THE END OF THE MONTH.</b>	\$	20

<sup>3</sup>See 69 Fed. Reg. at 5698 (to be codified at 37 C.F.R. 62.3(d)(2)).

**CERTIFICATION PAGE**

STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION SERVICE  
ELECTING PER PERFORMANCE OPTION - 2005

*I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this Statement of Account and hereby certify that the information provided herein is accurate and that I am authorized to sign this Statement of Account on behalf of the Statutory Licensee identified above.*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**SoundExchange does not make determinations as to whether each of the many services that rely on the statutory licenses under Sections 112 and 114 of the Copyright Act is eligible for statutory licensing, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, SoundExchange's acceptance of a service's payment does not express or imply any acknowledgment that a service is in compliance with the requirements of the statutory licenses.**

**SoundExchange does not acknowledge receipt of Statements of Account. If you wish to receive confirmation of delivery, please mail this form by Certified Mail, return receipt requested.**

**SHORT FORM  
STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION  
SERVICE  
ELECTING PER PERFORMANCE OPTION - 2005**



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Call SoundExchange at (202)828-0120 for its Federal Tax Identification Number.

**FOR THE 2005 CALENDAR MONTH OF (the "MONTH"):** \_\_\_\_\_  
(enter name of month)

**ENTITY / SERVICE NAME:** \_\_\_\_\_

**URL:** \_\_\_\_\_

**THIS SHORT FORM STATEMENT OF ACCOUNT IS TO BE USED ONLY BY THOSE LICENSEES THAT HAVE PREVIOUSLY EXCEEDED AND PAID THE ANNUAL MINIMUM FEE FOR 2005.**

Please enter the number of Performances transmitted for the Month.

PERFORMANCES		
1	Current Month	1
2	Line 1 multiplied by .96 ( <i>calculated</i> )	-
3	Line 2 multiplied by \$0.000762 ( <i>calculated</i> ). <b>This is the amount you must pay to SoundExchange for the Month. Payment is due 45 days after the end of the Month.</b>	-
	\$	3

**SHORT FORM  
STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION  
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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

---

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**STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION SERVICE  
ELECTING AGGREGATE TUNING HOUR OPTION - 2005**

**Send your PAYMENT and STATEMENT  
OF ACCOUNT to:**



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**FOR THE PERIOD:** FOR ANY MONTH DURING THE PERIOD JANUARY - DECEMBER  
2005

**FOR THE 2005 CALENDAR MONTH OF (the "MONTH"):** \_\_\_\_\_

**ENTITY / SERVICE NAME:** \_\_\_\_\_

**URL:** \_\_\_\_\_

**USE THIS STATEMENT OF ACCOUNT IF YOU HAVE PREVIOUSLY ELECTED<sup>1</sup> TO PAY ROYALTIES  
FOR THE SERVICE AND PERIOD NOTED ABOVE ON AN AGGREGATE TUNING HOUR<sup>2</sup> BASIS.**

**SECTION I. AGGREGATE TUNING HOUR ROYALTY CALCULATION**

Please enter the amount of Aggregate Tuning Hours (rounded to the nearest minute) transmitted for each category of programming transmitted for the current Month. Please also fill in the monthly information for earlier months in 2005, as it is necessary to calculate the annual minimum fee.

	Other Programming <sup>3</sup> (column a)	Non-Music Programming <sup>4</sup> (column b)	Broadcast Simulcast <sup>5</sup> Programming <sup>6</sup> (column c)	
1. January				1
2. February				2
3. March				3
4. April				4
5. May				5
6. June				6
7. July				7
8. August				8

*Footnotes on page 3*

**STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION SERVICE  
ELECTING AGGREGATE TUNING HOUR OPTION - 2005**

	Other Programming <sup>3</sup> (column a)	Non-Music Programming <sup>4</sup> (column b)	Broadcast Simulcast <sup>5</sup> Programming <sup>6</sup> (column c)	
9.	September			9
10.	October			10
11.	November			11
12.	December			12
13.	Add lines 1 – 12			13
14.	Multiply cell 13a by \$0.0117 (rounded to the nearest cent). If there are no Aggregate Tuning Hours for Other Programming, enter -0-.		\$	14
15.	Multiply cell 13b by \$0.000762 (rounded to the nearest cent). If there are no Aggregate Tuning Hours for Non-Music Programming, enter -0-.		\$	15
16.	Multiply cell 13c by \$0.0088 (rounded to the nearest cent). If there are no Aggregate Tuning Hours for Broadcast Simulcast Programming, enter -0-.		\$	16
17.	<b>Add lines 14 - 16. This is your Aggregate Tuning Hour Liability.</b>		\$	17

**SECTION II. ANNUAL LIABILITY**

18.	Enter the maximum number of channels or stations of programming transmitted by the service or entity since January 1, 2005. <sup>3</sup> If "5" or more, then enter "5" only.		18
19.	If line 18 is less than "5", then multiply line 18 by \$500. If the number of your channels or stations transmitted since January 1, 2005, is greater than or equal to "5", then enter \$2,500.	\$	19
20.	Enter the greater of lines 17 or 19. <b>This is your 2005 statutory liability year-to-date.</b>	\$	20
21.	Enter amounts previously paid to SoundExchange for the months January 2005 through the current date (inclusive of any payments previously made for your Annual Minimum Fee Liability for 2005). Do not include in this amount any payments made during 2005 for any prior year (rounded to the nearest cent).	\$	21
22.	Subtract line 21 from line 20. <b>THIS IS THE AMOUNT THAT MUST BE PAID TO SOUNDEXCHANGE FOR THE CURRENT MONTH. PAYMENT IS DUE 45 DAYS AFTER THE END OF THE MONTH.</b>	\$	22

*Footnotes on page 3*

**STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION SERVICE  
ELECTING AGGREGATE TUNING HOUR OPTION - 2005**

<sup>1</sup>The Notice of Election is located at  
[http://soundexchange.com/licensee/documents/Notice\\_of\\_Election\\_NonsubscriptionService\\_2005.pdf](http://soundexchange.com/licensee/documents/Notice_of_Election_NonsubscriptionService_2005.pdf)

<sup>2</sup>"Aggregate Tuning Hours" has the meaning set forth in 69 Fed. Reg. 5693, 5695-96 (Feb. 6, 2004) (to be codified at 37 C.F.R. § 262.2) ([http://soundexchange.com/licensee/documents/Fed\\_Reg\\_2\\_6\\_04\\_000.pdf](http://soundexchange.com/licensee/documents/Fed_Reg_2_6_04_000.pdf)).

<sup>3</sup>"Other Programming" is programming that is not Broadcast Simulcast Programming (defined in footnotes 5 and 6) or Non-Music Programming (defined in footnote 4). By way of example, an Internet-only classic rock station would be Other Programming. See 69 Fed. Reg. at 5697 (to be codified at 37 C.F.R. § 262.3(a)(1)(ii)(C)).

<sup>4</sup>"Non-Music Programming" is programming that is reasonably classified as news, talk, sports or business programming. See 69 Fed. Reg. at 5697 (to be codified at 37 C.F.R. § 262.3(a)(1)(ii)(A)).

<sup>5</sup>"Broadcast Simulcast" means (1) A simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, and (2) An Internet transmission in accordance with 17 U.S.C. § 114(d)(2)(C)(iii) of an archived program, which program was previously broadcast over-the-air by a terrestrial AM or FM broadcast radio station, in either case whether such Internet transmission or retransmission is made by the owner and operator of the AM or FM radio station that makes the broadcast or by a third party. See 69 Fed. Reg. at 5696 (to be codified at 37 C.F.R. § 262.2).

<sup>6</sup>"Broadcast Simulcast Programming" is programming contained in a Broadcast Simulcast that is not Non-Music Programming. By way of example, the retransmission on the Internet of a classic rock terrestrial radio station would be Broadcast Simulcast Programming.

<sup>7</sup>See 69 Fed. Reg. at 5698 (to be codified at 37 C.F.R. § 262.3(d)(2)).



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ELECTING AGGREGATE TUNING HOUR OPTION - 2005

**CERTIFICATION PAGE**

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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

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SERVICE  
ELECTING AGGREGATE TUNING HOUR OPTION - 2005**



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**FOR THE 2005 CALENDAR MONTH OF (the "MONTH"):**

\_\_\_\_\_ (enter name of month)

**ENTITY / SERVICE NAME:**

\_\_\_\_\_

**URL:**

\_\_\_\_\_

**THIS SHORT FORM STATEMENT OF ACCOUNT IS TO BE USED ONLY BY THOSE LICENSEES THAT HAVE PREVIOUSLY EXCEEDED AND PAID THE ANNUAL MINIMUM FEE FOR 2005.**

Please enter the amount of Aggregate Tuning Hours (rounded to the nearest minute) transmitted for each category of programming transmitted for the Month.

	Other Programming (column a)	Non-Music Programming (column b)	Broadcast Simulcast Programming (column c)	
1 Current Month				1
2 Cell 1a multiplied by \$0.0117 (calculated)			\$ -	2
3 Cell 1b multiplied by \$0.000762 (calculated)			\$ -	3
4 Cell 1c multiplied by \$0.0088 (calculated)			\$ -	4
5 Sum of lines 2 to 4. <b>This is the amount you must pay to SoundExchange for the Month. Payment is due 45 days following the end of the month.</b>			\$ -	5

**SHORT FORM  
STATEMENT OF ACCOUNT FOR AN ELIGIBLE NONSUBSCRIPTION TRANSMISSION  
SERVICE  
ELECTING AGGREGATE TUNING HOUR OPTION - 2005**

**CERTIFICATION PAGE**

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Signature: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

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STATEMENT OF ACCOUNT FOR AN ELIGIBLE SMALL COMMERCIAL WEBCASTER  
SIMULCASTER – 2005



STATEMENT OF ACCOUNT FOR  
AN ELIGIBLE SMALL COMMERCIAL WEBCASTER SIMULCASTER  
PURSUANT TO SMALL WEBCASTER SETTLEMENT ACT OF 2002

All **PAYMENTS** and **STATEMENTS OF ACCOUNT** must be submitted to:

SoundExchange<sup>1</sup>  
ATTN: Royalty Administration  
1330 Connecticut Avenue, N.W.  
Suite 330  
Washington, D.C. 20036

FOR THE PERIOD: Any month during the Period January – December 2005

STATUTORY LICENSEE: \_\_\_\_\_

URL: \_\_\_\_\_

**I. "GROSS REVENUES" AND "EXPENSES" INFORMATION:**

Please provide your "Gross Revenues<sup>2</sup>" and "Expenses<sup>3</sup>" for each month during 2005:

	Month	Gross Revenues	Expenses
1	January	\$	\$
2	February	\$	\$
3	March	\$	\$
4	April	\$	\$

<sup>1</sup> Please contact SoundExchange at 202.828.0120 for its Federal Tax Identification Number.

<sup>2</sup> "Gross Revenues" has the meaning set forth in Section 8(h) of Appendix A (the "Rates and Terms") to the Notice of Agreement published by the Copyright Office in the Federal Register on December 24, 2002. 67 Fed. Reg. 78510, 78513. <http://www.copyright.gov/fedreg/2002/67fr78510.pdf>.

<sup>3</sup> "Expenses" has the meaning set forth in Section 8(g) of the Rates and Terms. 67 Fed. Reg. 78510, 78513. <http://www.copyright.gov/fedreg/2002/67fr78510.pdf>.

5	May	\$	\$
6	June	\$	\$
7	July	\$	\$
8	August	\$	\$
9	September	\$	\$
10	October	\$	\$
11	November	\$	\$
12	December	\$	\$
13	Add lines 1 – 12	\$	\$

## II. CALCULATIONS

### A. Gross Revenues Liability:

- (14) Enter total Gross Revenues from line 13 \$\_\_\_\_\_ (14)
- (15) If the amount in line 14 is greater than \$250,000, proceed to line 18 and do NOT complete line 16. If not, proceed to line 16.
- (16) Multiply the amount in line (14) by 10% (.10). This is your Gross Revenue liability if your Gross Revenues were equal to or less than \$250,000: \$\_\_\_\_\_ (16)
- (17) Subtract \$250,000 from line 14 \$\_\_\_\_\_ (17)
- (18) Multiply the amount in line 17 by 12% (.12) \$\_\_\_\_\_ (18)
- (19) Add \$2,500 to line 18. This is your Gross Revenue Liability if your Gross Revenues were greater than \$250,000 \$\_\_\_\_\_ (19)

(20) Enter the greater of line 16 or 19 \$ \_\_\_\_\_ (20)

**B. Expenses Liability:**

(21) Enter total Expenses from line 13(b) \$ \_\_\_\_\_ (21)

(22) Multiply line 21 by 7% (.07). This is your Expenses Liability \$ \_\_\_\_\_ (22)

**C. Annual Liability:**

(23) Enter greater of line 20 or line 22. \$ \_\_\_\_\_ (23)

(24) Annual Minimum Fee Due. Enter \$2,000 if you had gross revenues during 2004 of not more than \$50,000 and expect gross revenues of less than \$50,000 during 2005. Otherwise, enter \$5,000. \$ 5,000.00 (24)

(25) Enter the greater of line 23 or 24. \$ \_\_\_\_\_ (25)

(26) Enter amounts previously paid for 2005. If no amounts paid, enter -0-. \$ \_\_\_\_\_ (26)

(27) Subtract line 26 from line 25. **This is the amount you must pay to SoundExchange** \$ \_\_\_\_\_ (27)

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

STATEMENT OF ACCOUNT FOR AN ELIGIBLE SMALL COMMERCIAL WEBCASTER  
SIMULCASTER – 2005

CERTIFICATION

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this Statement of Account and hereby certify that the information provided herein is accurate and that I am authorized to sign this Statement of account on behalf of the Eligible Small Webcaster identified above.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

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STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005

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FOR THE PERIOD: \_\_\_\_\_ JANUARY - DECEMBER, 2005 \_\_\_\_\_  
ENTITY / SERVICE NAME: \_\_\_\_\_  
URL: \_\_\_\_\_

USE THIS STATEMENT OF ACCOUNT IF YOU HAVE PREVIOUSLY ELECTED TO PAY ROYALTIES FOR THE SERVICE AND PERIOD NOTED ABOVE ON A PERCENTAGE OF REVENUE BASIS.

THE ELECTION OF A METHOD TO CALCULATE LIABILITY MUST BE MADE ON THE NOTICE OF ELECTION FOR A NEW SUBSCRIPTION SERVICE FOR THE 1998-2004 PERIOD, LOCATED AT [http://soundexchange.com/licensee/documents/Notice\\_of\\_Election\\_NewSubscription\\_1998-2004.pdf](http://soundexchange.com/licensee/documents/Notice_of_Election_NewSubscription_1998-2004.pdf)



**STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005**

**IMPORTANT NOTICE TO STATUTORY LICENSEES:**

The regulation permitting services to pay royalties on a percentage of revenue basis is very complicated. Services are advised to review carefully the regulation for this rate option, particularly the definition of "Subscription Services Revenue," to ensure that they are properly calculating their liability. The relevant regulations are set forth in the Appendix attached at the end of this Statement of Account for ease of reference.

In order to be eligible for this Percentage of Subscription Service Revenues Option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a 'loss leader' basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

If you do not qualify to pay royalties on a percentage of revenue basis, then you must pay royalties on a Per Performance or Aggregate Tuning Hour basis.

**SECTION I. PERCENTAGE OF SUBSCRIPTION SERVICE REVENUES OPTION**

**A. Calculation of Per Subscriber Minimum**

Please enter the number of Subscribers <sup>1</sup> for each month of the Period. **Year to date information is required in order to determine whether payments in excess of the annual minimum fee are required**

- 1 January
- 2 February
- 3 March
- 4 April
- 5 May
- 6 June
- 7 July
- 8 August

Subscribers	
	1
	2
	3
	4
	5
	6
	7
	8

---

*Footnotes on page 4*

**STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005**

- 9 September
- 10 October
- 11 November
- 12 December
- 13 Add lines 1 – 12.
- 14 Multiply Line 13 by 27 cents (\$0.27). **This is your Per Subscriber Minimum Before Adjustment.**

Subscribers	
	9
	10
	11
	12
	13
\$	14

**B. Calculation of Subscription Services Revenue**

Please enter the relevant revenues for each month of the Period.

	January (column a)	February (column b)	March (column c)	April (column d)	May (column e)	June (column f)	
15 Subscription fees <sup>2</sup>	\$	\$	\$	\$	\$	\$	15
16 Advertising <sup>3</sup>	\$	\$	\$	\$	\$	\$	16
17 Revenue Sharing /Commissions <sup>4</sup>	\$	\$	\$	\$	\$	\$	17
18 Data fees <sup>5</sup>	\$	\$	\$	\$	\$	\$	18
19 Bad debts recovered <sup>6</sup>	\$	\$	\$	\$	\$	\$	19
20 For each column, add lines 15 thru 19.	\$	\$	\$	\$	\$	\$	20

*Footnotes on page 4*

**STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005**

	July (column g)	August (column h)	September (column i)	October (column j)	November (column k)	December (column l)	
21 Subscription	\$	\$	\$	\$	\$	\$	21
22 Advertising	\$	\$	\$	\$	\$	\$	22
23 Revenue Sharing/Commissions	\$	\$	\$	\$	\$	\$	23
24 Data fees	\$	\$	\$	\$	\$	\$	24
25 Bad debts recovered	\$	\$	\$	\$	\$	\$	25
26 For each column, add lines 20 thru 25.	\$	\$	\$	\$	\$	\$	26

<sup>1</sup>"Subscribers" means each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by a Licensee without a fee (e.g., during a free trial period).

<sup>2</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(1)

<sup>3</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(2)

<sup>4</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(3)

<sup>5</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(4)

<sup>6</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(5)

**STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005**

- 27 Add lines 15(a) thru 15(f) and lines 21(g) thru 21(l). This is the total subscription fees revenue.
- 28 Add lines 16(a) thru 16(f) and lines 22(g) thru 22(l). This is the total Advertising revenue.
- 29 Add lines 17(a) thru 17(f) and lines 23(g) thru 23(l). This is the total Revenue Sharing/Commissions revenue.
- 30 Add lines 18(a) thru 18(f) and lines 24(g) thru 24(l). This is the total Data fees revenue.
- 31 Add lines 19(a) thru 19(f) and lines 25(g) thru 25(l). This is the total Bad debts recovered revenue.
- 32 Add lines 27 - 31
- 33 Multiply Line 32 by 10.9% (.109). **This is your Percentage of Subscription Services Revenue Liability Before Adjustment.**
- 34 Enter the greater of Line 14 or 33. **This is your Percentage of Subscription Services liability if there is no adjustment for direct licensed content.**

YTD Totals	
\$	27
\$	28
\$	29
\$	30
\$	31
\$	32
\$	33
\$	34

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**STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005**

**C. Adjustment for Direct Licensed Content**

A service seeking to take an adjustment for direct licensed content must complete this section; provided, however, that this option is not available for a Subscription Service where:

(A) a particular computer software product or other access device must be purchased for a separate fee from the Service as a condition of receiving transmissions of sound recordings through the Subscription Service, and the licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with section 37 C.F.R. § 262.2(m)(3), or

(B) the consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a 'bundled service' consisting of access to the Subscription Service and also access to the Internet in general).

35 January  
 36 February  
 37 March  
 38 April  
 39 May  
 40 June  
 41 July  
 42 August  
 43 September

Total Performances <sup>7</sup> (column a)	Total Direct Licensed Performances (column b)	
		35
		36
		37
		38
		39
		40
		41
		42
		43

*Footnotes on page 7*

**STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005**

	Total Performances <sup>7</sup> (column a)	Total Direct Licensed Performances (column b)	
44	October		44
45	November		45
46	December		46
47	Add lines 35 – 46.		47
48	Subtract Line 47(b) from Line 47(a)		48
49	Divide Line 48 by line 47(a). This is the fraction to be used for adjusting the Percentage of Subscription Services Revenue liability for direct licensed content, if applicable. Enter "100%" if you are <b>not</b> taking any adjustments for direct licensed content.	%	49
50	Multiply Line 34 by line 49. <b>This is your adjusted Percentage of Subscription Services Revenue liability.</b>	\$	50

**SECTION II. ANNUAL LIABILITY**

51	The Annual Minimum Fee Liability for any service electing to pay royalties on a percentage of revenue basis is \$5,000. <sup>8</sup>	\$5,000.00	51
52	Enter the greater of Line 50 or 51. <b>This is your statutory liability for the Period.</b>	\$	52
53	Enter amounts previously paid to SoundExchange for the Period. Do not include in this amount any payments made during 2005 for any prior year.	\$	53
54	Subtract Line 53 from Line 52. <b>THIS IS THE AMOUNT THAT MUST BE PAID TO SOUNDEXCHANGE FOR THE PERIOD.</b>	\$	54

<sup>7</sup>"Performance" has the meaning set forth in 69 Fed. Reg. 5693, 5696 (Feb. 6, 2004) (to be codified at 37 C.F.R. § 262.2)

<sup>8</sup>See 69 Fed. Reg. at 5698 (to be codified at 37 C.F.R. § 262.3(d)(2)).

**CERTIFICATION PAGE**

*I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this Statement of Account and hereby certify that the information provided herein is accurate and that I am authorized to sign this Statement of Account on behalf of the Statutory Licensee identified above.*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**SoundExchange does not make determinations as to whether each of the many services that rely on the statutory licenses under Sections 112 and 114 of the Copyright Act is eligible for statutory licensing, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, SoundExchange's acceptance of a service's payment does not express or imply any acknowledgment that a service is in compliance with the requirements of the statutory licenses.**

**SoundExchange does not acknowledge receipt of Statements of Account. If you wish to receive confirmation of delivery, please mail this form by Certified Mail, return receipt requested.**

APPENDIX

37 C.F.R. § 262.2 Definitions

For purposes of this part, the following definitions shall apply:

\* \* \*

(m) **Subscription Service Revenues** shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

(1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;

(2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether

(i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or

(ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or

(iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;

(3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less

(i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,



STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005

(ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and

(iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:

(A) The fact that a transaction is consummated on a different page than the page/location where a potential customer responds to a "buy button" or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third-party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (m)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.

**37 C.F.R. § 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings\* \* \* \* (a)(2)**  
*Subscription Services.* For their operation of Subscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENTAGE OF REVENUE OPTION - 2005

(i) Per Performance Option. \$0.000762 (0.0762 cents) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to "skip" a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial performances.

(ii) Aggregate Tuning Hour Option.—

(A) Non-Music Programming. \$0.000762 (0.0762 cents) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) Broadcast Simulcasts. \$0.0088 (0.88 cents) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) Other Programming. \$0.0117 (1.17 cents) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(iii) Percentage of Subscription Service Revenues Option. 10.9% of Subscription Service Revenues, but in no event less than 27 cents per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (e.g., during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence multiplied by the following fraction: the total number of Performances (as defined under § 262.2(j), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, divided by the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where—

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(m)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a "bundled service" consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a "loss leader" basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

Send your PAYMENT and STATEMENT OF ACCOUNT to:



SoundExchange, Inc.  
Attn: Royalty Administration  
1330 Connecticut Avenue, N.W.  
Suite 330  
Washington, D.C. 20036

Call SoundExchange at (202)828-0120 for its Federal Tax Identification Number.

FOR THE 2005 CALENDAR MONTH OF (the "Month"): \_\_\_\_\_  
(enter name of month)

ENTITY / SERVICE NAME: \_\_\_\_\_

URL: \_\_\_\_\_

THIS SHORT FORM STATEMENT OF ACCOUNT IS TO BE USED ONLY BY THOSE LICENSEES THAT HAVE PREVIOUSLY EXCEEDED AND PAID THE ANNUAL MINIMUM FEE FOR 2005.

IMPORTANT NOTICE TO STATUTORY LICENSEES:

The regulation permitting services to pay royalties on a percentage of revenue basis is very complicated. Services are advised to review carefully the regulation for this rate option, particularly the definition of "Subscription Services Revenue," to ensure that they are properly calculating their liability. The relevant regulations are set forth in the Appendix attached at the end of this Statement of Account for ease of reference.

In order to be eligible for this Percentage of Subscription Service Revenues Option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a 'loss leader' basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

If you do not qualify to pay royalties on a percentage of revenue basis, then you must pay royalties on a Per Performance or Aggregate Tuning Hour basis.

**SECTION I. PERCENTAGE OF SUBSCRIPTION SERVICE REVENUES OPTION**

**A. Calculation of Per Subscriber Minimum**

Please enter the number of Subscribers<sup>1</sup> for the current Month.

	Subscribers	
1 Current Month	-	1
2 Line 1 multiplied by 27 cents (\$0.27) (calculated). <b>This is your Per Subscriber Minimum Before Adjustment.</b>	-	2
	\$	

**B. Calculation of Subscription Services Revenue**

Please enter the relevant revenues for the current Month.

3 Subscription fees <sup>2</sup>	\$	-	3
4 Advertising <sup>3</sup>	\$	-	4
5 Revenue Sharing /Commissions <sup>4</sup>	\$	-	5
6 Data fees <sup>5</sup>	\$	-	6
7 Bad debts recovered <sup>6</sup>	\$	-	7
8 Total Subscription Services Revenue (calculated)	\$	-	8
9 Line 8 multiplied by 10.9% (.109) (calculated). <b>This is your Percentage of Subscription Services Revenue Liability Before Adjustment.</b>	\$	-	9
10 Greater of line 2 or 9 (calculated). <b>This is your Percentage of Subscription Services liability if there is no adjustment for direct licensed content.</b>	\$	-	10

<sup>1</sup>**Subscribers** means each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by a Licensee without a fee (e.g., during a free trial period).

<sup>2</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(1).

<sup>3</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(2).

<sup>4</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(3).

<sup>5</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(4).

<sup>6</sup>For a complete definition of this element of Subscription Services Revenue, see 37 C.F.R. § 262.2(m)(5).

**C. Adjustment for Direct Licensed Content**

A service seeking to take an adjustment for direct licensed content must complete this section; provided, however, that this option is not available for a Subscription Service where:

(A) a particular computer software product or other access device must be purchased for a separate fee from the Service as a condition of receiving transmissions of sound recordings through the Subscription Service, and the licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with section 37 C.F.R. § 262.2(m)(3), or

(B) the consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a 'bundled service' consisting of access to the Subscription Service and also access to the Internet in general).

11 Place an "X" in Line 35 if you are taking an adjustment for direct licensed content =====>  11

Total Performances <sup>7</sup> , i.e., Transmissions of Sound Recordings for Which a License is Required. (column a)	Total Performances (i.e., number in column a PLUS Total Direct Licensed Performances <sup>8</sup> ) (column b)
-	-

12 Current Month 12

13 Cell 12(a) divided by cell 12(b). This is the fraction to be used for adjusting the Percentage of Subscription Services Revenue liability for direct licensed content, if applicable. **If you are not taking an adjustment for direct licensed content, then 100%. (calculated)**

	100.0000%	13
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14 Line 10 multiplied by line 13. **This is your adjusted (or unadjusted) Percentage of Subscription Services Revenue liability. (calculated).**

**THIS IS THE AMOUNT THAT MUST BE PAID TO SOUNDEXCHANGE FOR THE MONTH. PAYMENT IS DUE 45 DAYS AFTER THE END OF THE MONTH.**

	-	14
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<sup>7</sup>See Appendix for definition of *Total Performances*

<sup>8</sup>**Direct Licensed Performances** means each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one Listener) where the service has previously obtained a license from the Copyright Owner of such sound recording.

<sup>9</sup>See 69 Fed. Reg. at 5698 (to be codified at 37 C.F.R. § 262.3(d)(2)).

**CERTIFICATION PAGE**

*I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this Statement of Account and hereby certify that the information provided herein is accurate and that I am authorized to sign this Statement of Account on behalf of the Statutory Licensee identified above.*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

---

SoundExchange does not make determinations as to whether each of the many services that rely on the statutory licenses under Sections 112 and 114 of the Copyright Act is eligible for statutory licensing, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, SoundExchange's acceptance of a service's payment does not express or imply any acknowledgment that a service is in compliance with the requirements of the statutory licenses.

SoundExchange does not acknowledge receipt of Statements of Account. If you wish to receive confirmation of delivery, please mail this form by Certified Mail, return receipt requested.

APPENDIX

37 C.F.R. § 262.2 Definitions.

For purposes of this part, the following definitions shall apply:

\* \* \*

(j) **Total Performances** means each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

- (1) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);
- (2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and
- (3) An incidental performance that both:
  - (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and
  - (ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(m) **Subscription Service Revenues** shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

- (1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;
- (2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether
  - (i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or
  - (ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or
  - (iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;
- (3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less
  - (i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,
  - (ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and
  - (iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:
    - (A) The fact that a transaction is consummated on a different page than the page/location where

SHORT FORM STATEMENT OF ACCOUNT FOR A NEW SUBSCRIPTION SERVICE ELECTING PERCENT OF REVENUE - 2005

a potential customer responds to a "buy button" or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third-party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (m)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.



37 C.F.R. § 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings

• • • •

(a)(2) **Subscription Services.** For their operation of Subscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* \$0.000762 (0.0762 cents) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to "skip" a recording is or is not permitted under 17 U.S.C. § 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial performances.

(ii) *Aggregate Tuning Hour Option.—*

(A) Non-Music Programming. \$0.000762 (0.0762 cents) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) Broadcast Simulcasts. \$0.0088 (0.88 cents) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) Other Programming. \$0.0117 (1.17 cents) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(iii) *Percentage of Subscription Service Revenues Option.* 10.9% of Subscription Service Revenues, but in no event less than 27 cents per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (e.g., during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence multiplied by the following fraction: the total number of Performances (as defined under § 262.2(j), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, divided by the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where—

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(m)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a "bundled service" consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a "loss leader" basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.