



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

## FINAL RULE

### NONCOMMERCIAL EDUCATIONAL BROADCASTING COMPULSORY LICENSE

The following excerpt is taken from Volume 63, Number 9 of the  
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#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 253

[Docket No. 96-6 CARP NCBRA]

#### Noncommercial Educational Broadcasting Compulsory License

**AGENCY:** Copyright Office, Library of  
Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing the adoption of final rules governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works.

**EFFECTIVE DATE:** January 1, 1998.

#### FOR FURTHER INFORMATION

**CONTACT:** David O. Carson, General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202)707-8380. Fax: (202)707-8366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable

to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. 17 U.S.C. 118(c). The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates. 57 FR 60954 (December 22, 1992).

Section 118(b) provides that any copyright owner and any public broadcasting entity may negotiate the rates and terms for the compulsory license, or in the absence of a negotiated license, the Librarian of Congress shall, pursuant to Chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress \* \* \*

Interested parties who submit proposals for adjusting the terms and rates for the section 118 license directly to the Librarian of Congress may petition the Librarian to submit these proposals to a public notice and comment proceeding, whereby copyright owners and users that would be affected by the proposals are given the opportunity to challenge them. 37 CFR 251.63. Any party who objects to the proposed terms and rates must submit, in turn, their challenges by a date certain, and must be willing to participate in the Copyright Arbitration Royalty Panel (CARP) proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by an interested party who will not participate in a CARP proceeding, the Librarian may adopt the terms and rates of the proposals.

Accordingly, interested copyright owners

and users of these works may file either a voluntary agreement or a joint proposal outlining the adjustments to the terms and rates for the section 118 license; or in the case of unaffiliated copyright owners,<sup>1</sup> the users may submit their proposals for the adjustment of the terms and rates of the section 118 license directly to the Librarian of Congress. See 62 FR 51619 (October 2, 1997) and 62 FR 63502 (December 1, 1997). A joint proposal differs significantly from a voluntary settlement. The parties to a voluntary agreement represent all persons who would be affected by the agreement and the parties have the authority to bind their members. In a joint proposal, the parties to the agreement do not represent all persons who would be affected by the agreement, or if they do, at least one of the parties does not have the authority to bind its members.

##### II. This Proceeding

The Office commenced the process for adjusting the section 118 rates and terms with the publication of a Federal Register notice announcing a negotiation period during which interested parties could negotiate voluntary license agreements that are "given effect in lieu of any determination by the Librarian of Congress: Provided, That copies of such agreements are filed in the Copyright Office within thirty days of execution." 17 U.S.C. 118(b)(2). The notice also requested comment on the need for a CARP to set the rates and terms, in addition to setting a precontroversy discovery schedule and an initiation date for the CARP. 61 FR 54459 (October 18, 1996).

On November 11, 1996, the National Public Radio, the Public Broadcasting

<sup>1</sup> An unaffiliated copyright owner is one whose interests are not represented by a performing rights society, or by any other organization participating in the proceeding.

service, the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc., the National Music Publishers Association, Inc. (NMPA), and the Harry Fox Agency, Inc. filed notices of intent to participate. On June 19, 1997, the National Religious Broadcasters Music License Committee requested leave to file its notice of intent to participate after the deadline for making this filing had passed. The Register granted its motion and accepted the filing. Order in Docket No. 96-6 CARP NCBRA (July 30, 1997). Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, did not file notices of intent to participate, although they participated in the negotiations of certain rates and terms of interest to their members.

Upon the request of the parties, the Office vacated the schedule set in the October 18, 1996, order in order to allow the parties more time to negotiate the rates and terms for the section 118 compulsory license. In July 1997, however, the parties informed the Office that the negotiations had been unproductive and identified the need to convene a CARP to set reasonable terms and rates. At this time, the Office set a new schedule for the 45-day precontroversy discovery period, including a date for submitting proposals for the payment of royalties to unaffiliated copyright owners and a date for initiating the CARP. Order in Docket No. 96-6 CARP NCBRA (July 30, 1997).

In accordance with the new schedule, the National Religious Broadcasters Music License Committee (NRBMLC), the Public Broadcasting Service, and the National Public Radio filed proposed rates and terms for the payment of royalty fees to unaffiliated copyright owners on September 2, 1997. Subsequently, on October 1, 1997, the parties filed additional joint proposals for further adjusting the rates and terms of the section 118 compulsory license and notices of settlement. The only terms and rates not addressed in proposed regulations or a joint settlement concern the terms and rates relating to the performance of musical compositions in the repertoires of ASCAP and BMI by PBS and NPR.<sup>2</sup>

The Office has published all the proposed rates and terms in the Federal Register for public review and comment, pursuant to 37 CFR 251.63. 62 FR 51619 (October 2, 1997) and 62 FR 63502 (December 1, 1997). The

December 1, 1997, notice announced that the proposed regulations would become final on January 1, 1998, unless an interested party filed a challenge to the proposed regulations and a Notice of Intent to Participate in a CARP proceeding, on or before December 29, 1997. 62 FR 63502 (December 1, 1997). See also 62 FR 65777 (December 16, 1997) (correction notice clarifying the filing dates).

The proposed regulations, however, did not include the 1998 rates for the use of published nondramatic musical compositions in the repertoires of ASCAP and BMI by public broadcasting entities licensed to colleges, universities and other nonprofit educational institutions not affiliated with National Public Radio. In their direct cases, ASCAP and BMI proposed that the 1998 rate should be the current rate adjusted for a cost of living increase, according to the methodology adopted by the former Copyright Royalty Tribunal in the 1987 rate adjustment proceeding. 52 FR 49010 (December 29, 1987). The Office stated in the December 1, 1997, notice that it would publish these rates in the final regulations.

The Copyright Office has received no comments or Notices of Intent to Participate in a CARP proceeding in response to its notices announcing the proposed regulations for adjusting certain rates and terms of the noncommercial educational broadcasting compulsory license. Therefore, the Office announces the adoption of the proposed regulations published on December 1, 1997, as final regulations, including the rate for the performance of musical compositions in the ASCAP and BMI repertoires by public broadcasting entities licensed to colleges and universities.

The Office has calculated these rates based on a 2.1% change in the Consumer Price Index (CPI), during the period between the first CPI subsequent to December 1, 1996, and the last CPI published prior to the December 1, 1997. (1996's figure was 158.3; 1997's figure was 161.6, based on 1982-1984 equaling 100). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is \$222. The rate for the use of musical works in the SESAC repertory, which in subsequent years will be adjusted in a like manner, was set at \$60 in the joint proposal submitted by SESAC and the American Council on Education and included in the proposed regulations at 37 CFR 253.5(c)(3).

## Regulatory Flexibility Act

Consistent with the requirements of the Regulatory Flexibility Act, the Copyright Office has considered the effect of this final regulation on small businesses and has determined that it will have no significant impact. The Copyright Act creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. The purpose of such compulsory license is to allow any business small or large to make use of the compulsory license instead of privately negotiating rates and terms. Reliance on the compulsory license saves time, effort, and expense.

The rates and terms of such compulsory license are subject to adjustment at five year intervals. The last setting of terms and rates was published in the Federal Register in 1992. The Office initiated the process for adjusting rates and terms on October 18, 1996, by announcing a negotiation period. The law requires the Office to convene a Copyright Arbitration Royalty Panel (CARP) if the parties do not agree upon the rates and terms. The Office vacated the original schedule in order to allow the parties more time to negotiate the rates and terms for the section 118 compulsory license. All announcements that affected the parties were published both in the Federal Register and online (<http://lcwebs.loc.gov/copyright>).<sup>\*</sup> At the conclusion of the negotiation period, the rates and terms were agreed upon by the parties except in one area which does not affect any small business. The businesses which did not reach agreement are all dominant in their field of operation.

## List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television.

## Final Regulations

For the reasons set forth in the preamble, the Library amends 37 CFR part 253 as follows:

### **PART 253--USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING**

1. The authority citation for part 253 continues to read as follows:

<sup>2</sup>The Office shall convene a CARP to determine the appropriate rates and terms in this instance. See Order in Docket No. 96-4 CARP NCBRA (July 30, 1997). Currently, these parties are engaged in precontroversy discovery.

<sup>\*</sup>Error: web address is: <http://lcweb.loc.gov/copyright>

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

**§ 253.1 [Amended]**

2. The first sentence of § 253.1 is amended to remove the year dates "1993" and "1997" and to add in their place "1998" and "2002", respectively.

3. Section 253.4 is amended by revising the introductory text, paragraphs (a)(1) through (8), and the last sentence of paragraph (c) to read as follows:

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

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by Secs. 253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements, or compositions in the repertoires of ASCAP, BMI or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(a) Determination of royalty rates. (1) For the performance of such a work in a feature presentation of PBS:

1998-2002.....\$211.53

(2) For the performance of such a work as background or theme music in a PBS program:

1998-2002.....\$53.59

(3) For the performance of such a work in a feature presentation of a station of PBS:

1998-2002.....\$18.08

(4) For the performance of such a work as background or theme music in a program of a station of PBS:

1998-2002.....\$3.81

(5) For the performance of such a work in a feature presentation of NPR:

1998-2002.....\$21.44

(6) For the performance of such a work as background or theme music in an NPR program:

1998-2002.....\$5.20

(7) For the performance of such a work in a feature presentation of a station of NPR:

1998-2002.....\$1.52

(8) For the performance of such work as background or theme music in a program of a station of NPR:

1998-2002..... \$.54

\*\*\*\*\*

(c) \* \* \* Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP or BMI covering the license period January 1, 1998, to December 31, 2002, to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

\*\*\*\*\*

4. In § 253.5, paragraphs (c) (1) through (3) are revised to read as follows:

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

\*\*\*\*\*

(c) \* \* \*

(1) For all such compositions in the repertoire of ASCAP, \$222 annually.

(2) For all such compositions in the repertoire of BMI, \$222 annually.

(3) For all such compositions in the repertoire of SESAC, \$60 annually.

\*\*\*\*\*

5. In § 253.6, paragraph (c) is revised to read as follows:

**§ 253.6 Performance of musical compositions by other public broadcasting entities.**

\*\*\*\*\*

(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 repertoire of ASCAP, in 1998, \$375; in 1999, \$390; in 2000, \$405; in 2001, \$420; in 2002, \$440.

(2) For all such compositions in the repertoire of BMI, in 1998, \$375; in 1999, \$390; in 2000, \$405; in 2001, \$420; in 2002, \$440.

(3) For all such compositions in the repertoire of SESAC, in 1998, \$78; in 1999, \$82; in 2000, \$86; in 2001, \$89; in 2002, \$92.

(4) For the performance of any other such

compositions, in 1998 through 2002. \$1.  
\* \* \* \* \*

6. Section 253.7 is amended by revising paragraph (a); revising the schedules in paragraphs (b)(1) (i) and (ii), (b)(2) and (b)(4); and revising the last sentence of paragraph (b)(5) to read as follows:

**§ 253.7 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, or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter, 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. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

1998-2002  
Feature.....\$106.04  
Concert feature (per minute).....31.84  
Background.....53.59  
Theme:  
Single program or first series  
program.....53.59  
Other series program.....21.75  
(ii) \* \* \*

1998-2002  
Feature.....\$8.76  
Concert feature (per minute).....2.30  
Background.....3.81  
Theme:  
Single program or first series  
program.....3.81  
Other series program.....1.52

\*\*\*\*\*  
(2) \* \* \*

1998-2002  
Feature.....\$11.48  
Concert feature (per half hour).....16.85  
Background.....5.75  
Theme:  
Single program or first series

program.....5.75  
 Other series program.....2.29

\*\*\*\*\*  
 (4)\*\*\*\*\*

1998-2002  
 Feature.....\$.74  
 Feature (concert)(per half hour).....1.54  
 Background......37

(5)\*\*\*\*\* Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the royalty rates established in this schedule.

\*\*\*\*\*

7. In § 253.8, paragraph (b)(1) and the last sentence of paragraph (f)(1) are revised as follows ( the undesignated paragraph following paragraph (b)(1) is unchanged):

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

\*\*\*\*\*

(b) Royalty rate. (1) The following schedule of rates shall apply to the use of works within the scope of this section:

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

(A) For a featured display of a work.

1998-2002.....\$64.78]

(B) For background and montage display.

1998-2002.....\$31.59

(C) For use of a work for program identification or for thematic use.

1998-2002.....\$127.71

(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.

1998-2002.....\$41.95

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

(A) For featured display of a work.

1998-2002.....\$41.95

(B) For background and montage display.

1998-2002.....\$21.51

(C) For use of a work for program identification or for thematic use.

1998-2002.....\$85.76

(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 semin<sup>b</sup> reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1998-2002.....\$21.51

\*\*\*\*\*

(f) Terms of use. (1)\*\*\*\*\* Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the rates established in this schedule.

\*\*\*\*\*

8. In § 253.10, the first sentence of paragraph (a) is revised to read as follows:

**§ 253.10 Cost of living adjustment.**

(a) On December 1, 1998, the Librarian of Congress 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, 1997, to the most recent Index published prior to December 1, 1998.

\*\*\*\*\*

Dated: January 6, 1998.

**David O. Carson,**  
*General Counsel.*

Approved by:  
**James H. Billington,**  
*The Librarian of Congress.*

[FR Doc. 98-819 Filed 1-13-98; 8:45 am]

**BILLING CODE 1410-33-P**

<sup>b</sup>Error: line should read:  
 "irrespective of whether the reproduced"