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Copyright Royalty Board

37 CFR Part 381

[Docket No. 2011-9 CRB NCEB COLA]

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (“COLA”) of 3.5% in the royalty rates that colleges, universities, and other educational institutions that are not affiliated with National Public Radio pay for the use of published nondramatic musical compositions in the ASCAP, BMI and SESAC repertories. The COLA is based on the change in the Consumer Price Index from October 2010 to October 2011.

DATES: *Effective Date:* January 1, 2012.

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SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, 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 parts 253 and 381.

Final regulations 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 for the license period beginning January 1, 2008, and ending December 31, 2012, were published in the **Federal Register** on November 30, 2007. *See* 72 FR 67646. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items (“CPI-U”)) 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. *See* 37 CFR 381.10(a)(requiring publication of a revised schedule of rates for 37 CFR 381.5). Accordingly, the Judges are hereby announcing the change in the CPI-U and applying the annual COLA to the rates set out in 37 CFR 381.5(c).

The change in the cost of living as determined by the CPI-U during the period from the most recent index published before December 1, 2010, to the most recent index published before December 1, 2011, is 3.5%.¹ Rounding to the nearest dollar,² the royalty rates for the performance of published nondramatic musical compositions in the repertoires of ASCAP, BMI, and SESAC are \$312, \$312, and \$125, respectively.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Final Regulations

¹ The most recent CPI-U figures are published in November of each year and use the period 1982-1984 to establish a reference base of 100. The index for October 2010 was 218.711, while the figure for October 2011 was 226.421.

² *See* 37 CFR 381.10(b)(adjusted royalty rates shall be “fixed at the nearest dollar”).

For the reasons set forth in the preamble, part 381 of title 37 of the Code of Federal Regulations is amended to read as follows:

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

1. The authority citation for part 381 continues to read as follows:

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

2. Section 381.5 is amended by revising paragraphs (c)(1) through (3) to read as follows:

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

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, \$312 annually.

(2) For all such compositions in the repertory of BMI, \$312 annually.

(3) For all such compositions in the repertory of SESAC, \$125 annually.

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Dated: November 23, 2011.

James Scott Sledge,
Chief U.S. Copyright Royalty Judge.

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