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Copyright Royalty Board

37 CFR Part 380

[Docket No. 14-CRB-0001-WR (2016-2020) (COLA 2017)]

Cost of Living Adjustment to Royalty Rates for Webcaster Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of ephemeral reproductions of sound recordings.

DATES: *Effective Date:* January 1, 2017.

Applicability Dates: These rates are applicable to the period January 1, 2017, through December 31, 2017.

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SUPPLEMENTARY INFORMATION: Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On May 2, 2016, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2016-2020 for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. *See* 81 FR 26316.

Pursuant to those regulations, at least 25 days before January 1 of each year, the Judges shall publish in the **Federal Register** notice of a COLA applicable to the royalty fees for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10(a)(1)-(2).

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November 2015 (237.838)¹, according to the formula $(1 + (C_y - 237.838)/237.838) \times R_{2016}$, where C_y is the CPI-U published by the Secretary of Labor before December 1 of the preceding year and R_{2016} is the royalty rate for 2016 (i.e., \$0.0022 per subscription performance or \$0.0017 per nonsubscription performance). The adjustment shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c) (as revised herein). The CPI-U published by the Secretary of Labor from the most recent index published before December 1, 2016, is 241.729². Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in no adjustment in the rates for 2017.

The 2017 rate for eligible transmission of sound recordings by commercial webcasters remains unchanged at a rate of \$.0022 per subscription performance and \$.0017 per nonsubscription performance.

Application of the formula to rates for noncommercial webcasters results in an unchanged rate of \$.0017 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

¹ The current regulations erroneously state that 237.336 was the CPI-U published in November 2015. That was actually the CPI-U for November 2015 that was published in December 2015. See *BLS News Release – Consumer Price Index November 2015*, available at http://www.bls.gov/news.release/archives/cpi_12152015.pdf. The correct figure for this part of the calculation is 237.838 because it was the CPI-U published in November 2015. See *BLS News Release – Consumer Price Index November 2015*, available at http://www.bls.gov/news.release/archives/cpi_11172015.pdf. The Judges have corrected the figure in text of the regulations published herein.

² As announced on November 17, 2016, by the Bureau of Labor Statistics in its *News Release – Consumer Price Index October 2016*, available at <http://www.bls.gov/news.release/pdf/cpi.pdf>.

As provided in 37 CFR 380.1(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Final Regulations

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

**PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE
NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR
THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE
TRANSMISSIONS**

1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

2. Section 380.10 is amended by:

a. Revising paragraph (a).

b. In paragraph (c), removing “237.336” wherever it appears and adding in its place “237.838”.

The revision reads as follows:

§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *Royalty fees.* For the year 2017, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

(1) *Commercial Webcasters:* \$0.0022 per performance for subscription services and \$0.0017 per performance for nonsubscription services.

(2) *Noncommercial webcasters.* \$500 per year for each channel or station and \$0.0017 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

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Dated: November 29, 2016

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

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