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Copyright Royalty Board

[Docket No. 18-CRB-0015-AU (Educational Media Foundation)]

Notice of Intent to Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2015, 2016, and 2017 statements of account submitted by noncommercial webcaster Educational Media Foundation concerning royalty payments it made pursuant to a statutory license.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 18-CRB-0015-AU (Educational Media Foundation).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in

section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382-84.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.*, the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.*, 37 CFR 380.2(a)¹.

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.*, 37 CFR 380.6(c).

On December 20, 2018, SoundExchange filed with the Judges a notice of intent to audit licensee Educational Media Foundation for its transmissions terminating in the United States for the years 2015, 2016, and 2017. The Judges must publish notice in the Federal Register within 30 days of receipt of a notice announcing the Collective's intent

¹ Citations are to current sections of the CFR.

to conduct an audit. *See id.* Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2018.

Dated: January 10, 2019.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

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